

SRA BOARD

11 March 2015

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**Amendments to the Quality Assurance Scheme for Advocates (QASA)
regulatory arrangements**

Purpose

- 1 To seek the Board's approval of amendments to regulatory arrangements for the QASA scheme.

Recommendation

- 2 The Board is asked to:
 - (a) make the SRA Amendments to Regulatory Arrangements (QASA) Rules [2015] (Annex 1).

If you have any questions about this paper please contact: Crispin Passmore, Executive Director, Regulation and Education, Crispin.Passmore@sra.org.uk or 0121 329 6687

SRA BOARD

11 March 2015

CLASSIFICATION – PUBLIC



**Amendments to the Quality Assurance Scheme for Advocates (QASA)
regulatory arrangements**

Background to the scheme

- 3 QASA is an accreditation scheme and is designed to ensure that those undertaking criminal advocacy are competent to do so. Under the scheme, advocates must demonstrate they are competent to undertake advocacy at one of four levels, benchmarked against the complexity and seriousness of the case. Advocates are required to reaccredit every five years.
- 4 The QASA scheme was approved by the LSB in July 2013 and introduced in October 2013. In September 2013, the Criminal Bar Association issued judicial review proceedings challenging QASA, and implementation was put on hold as a result. The claimants have lost their challenge both at first instance and in the Court of Appeal. They have sought permission to appeal to the Supreme Court which has been granted. The hearing has been provisionally listed for 16 March 2015. Pending the outcome of the litigation, the Court has stayed implementation of the scheme.

Why is a rule change required?

- 5 Registration for the scheme was organised in three phases, according to circuit, and registration for all circuits was originally due to be complete by 31 December 2014. As a result of the litigation, registration was suspended. The registration deadlines for all phases have now passed.
- 6 The registration timetable is set out in current QASA regulations. Any amendment to these regulations requires formal regulatory change. Having prescribed dates for registration within our rules creates inflexibility which prevents us from planning, announcing and implementing revised registration dates quickly.
- 7 Therefore, instead of changing the dates in the QASA regulations to permit a revised timetable for regulation, we wish to remove specific dates from the QASA regulations altogether. This approach :
 - allows us to retain flexibility and control as to when to implement revised registration timetables;
 - means we will not need to seek further regulatory changes to amend the timetable should it be necessary to do so, bearing in mind ongoing litigation.

SRA BOARD

11 March 2015

CLASSIFICATION – PUBLIC



- 8 Current QASA regulations were made before our internal IT system and wider administrative processes to support the effective operation of the scheme were finalised. As a result of the development of our IT system and operational processes, we also intend in future to make further regulatory changes that:
- ensure that regulations accurately reflect operational processes;
 - enable us to provide further clarity on the requirements of the scheme to solicitor advocates;
 - reduce the administrative burden on solicitors.
- 9 In this paper the Board is being asked to make one such change, namely to remove the requirement for solicitors to submit confirmation of whether or not they have passed the level 2 assessment. We will in any event receive this information direct from the assessment centre.
- 10 We considered it unnecessary to consult on these proposals. They are minor in nature and will remove out of date registration deadlines and ensure that our regulations reflect operational processes. At this stage, pending the outcome of the litigation, we do not know the revised timetable for implementation; these changes afford us flexibility to implement a revised registration timetable without further formal rule change. They do not alter the underlying objective of the original regulation nor do they have any substantive effect on the wider QASA regulations. We have engaged with the Legal Services Board and the Law Society to discuss these changes.
- 11 We have not identified any negative effects of our proposals on:
- internal budgets;
 - business / operational impact and risks;
 - legal risk;
 - consumer impact;
 - equality and diversity considerations.

Recommendation: the Board is asked to make the SRA Amendments to Regulatory Arrangements (QASA) Rules [2015] (Annex 1).

SRA BOARD

11 March 2015

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Supporting information

Links to the Strategic Plan and / or Business Plan

- 12 Our proposed amendments ensure that our regulations strike the right balance between reducing regulatory burdens and ensuring consumer protection.

How the issues support the principles of better regulation

- 13 Our proposed amendments ensure that our regulations are open, simple and user friendly and targeted to minimise administrative impact on those that we regulate.

How the action will be evaluated

- 14 The implementation and operation of the scheme will be subject to a two-year review. As part of this review, there will be an opportunity to assess the effectiveness of our regulations.

What engagement approach has been used to inform the work (and what further communication and engagement is needed)

- 15 Our proposed amendments are minor in nature and do not require internal or external engagement.

What equality and diversity considerations relate to this issue

- 16 We have not identified any adverse or disproportionate equality impacts of our proposed rule change.

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Date 20 February 2015

Annex 1 Amendments to the Quality Assurance Scheme for Advocates (QASA) regulatory arrangements.

SRA BOARD
11 March 2015

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SRA Quality Assurance Scheme for Advocates (Crime) Regulations 2013

Introduction to the Quality Assurance Scheme for Advocates (Crime) Regulations

Preamble

Authority: Made on 26 July 2013 by the Solicitors Regulation Authority Board under sections 2, 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 30 September 2013

Replacing: SRA Quality Assurance Scheme for Advocates (Crime) Notification Regulations 2012

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. These regulations aim to ensure that *solicitors* and *REs* who want to conduct *criminal advocacy* in England and Wales are competent to do so.

Advocacy is part of an effective justice system. *Solicitors* and *REs* are granted rights of audience in all courts upon qualification/registration but must, in those proceedings which fall under the definition of *criminal advocacy*, exercise those rights of audience only where accredited by the *SRA* under these regulations.

The *QASA*, to which these regulations give effect so far as *solicitors* and *REs* are concerned, is designed so that all advocates in the criminal courts have undergone a process of *accreditation* to ensure they are only dealing with cases within their competence and that they are subject to assessment and independent monitoring of their performance against agreed criteria.

The intention is to give the public confidence that those conducting criminal advocacy have met appropriate standards and adhere to the relevant *Principles*.

SRA BOARD
11 March 2015

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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 underpin all aspects of practice. Outcomes relevant to these regulations are listed beneath the *Principles*.

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;
8. run *your* business or carry out *your* role in the business effectively and in accordance with proper governance and sound financial and risk management principles;
9. run *your* business or carry out *your* role in the business in a way that encourages equality of opportunity and respect for diversity; and
10. protect *client money* and *assets*.

Outcomes

The outcomes which apply to these regulations are that:

- O(QS1) *you* have achieved the standard of competence required of advocates conducting *criminal advocacy*;
- O(QS2) *you* demonstrate this competence through independent assessment;
- O(QS3) *you* act so that *clients*, the judiciary and the wider public, have confidence that this has been demonstrated.

SRA BOARD
11 March 2015

CLASSIFICATION – PUBLIC



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: Quality Assurance Scheme For Advocates (Crime) (“QASA”)

Regulation 2: Scope of scheme

- 2.1 *You* may not undertake *criminal advocacy* unless *accredited* to do so in accordance with these regulations and the *QASA*.
- 2.2 *You* may be *accredited* under these regulations at a level ranging from 1 to 4 corresponding to the increasing seriousness and complexity of criminal cases falling within those levels as set out in the *QASA*.
- 2.3 *You* may only accept instructions to conduct *criminal advocacy* where *you* are satisfied they fall within or below the level at which *you* are *accredited*, unless *you* are satisfied that *you* are competent to accept instructions for a case at a higher level in light of the particular circumstances and in accordance with the guidance in the *QASA*.

Regulation 3: Accreditation requirement

- 3.1 *You* may only be *accredited* under these regulations if *you* are a *solicitor* holding a current practising certificate or an *REL*.
- 3.2 *You* may only be *accredited* under these regulations at levels 2, 3 or 4 if *you* have obtained the *higher courts advocacy qualification* for *criminal advocacy*.

Regulation 4: General provisions relating to applications made under these regulations

- 4.1 *You* may register, make an application or give a notification under these regulations by:

SRA BOARD
11 March 2015



CLASSIFICATION – PUBLIC

- (a) completing the *prescribed* form;
 - (b) submitting such information as may be *prescribed*; and
 - (c) paying the *prescribed* fee, if any.
- 4.2 On receipt of an application under these regulations the **SRA** shall decide whether to grant or refuse the application, and shall notify *you* accordingly giving reasons for any decision to refuse the application.
- 4.3 Before reaching a decision on an application, the **SRA** may:
- (a) require *you* to undertake such other steps as the **SRA** may specify in order for *you* to be accredited at one of the levels under the **QASA**.
 - (b) require from *you* or a third party, such additional information, documents or references as it considers appropriate.

Part 3: Accreditation for current practitioners

Regulation 5: Application of Part 3

- 5.1 Part 3 of these regulations applies to you if you were admitted as a *solicitor* or became an *REL* before 1 September 2015.

Regulation 6: Accreditation at level 1

- 6.1 *You* may register with the **SRA** to conduct *criminal advocacy* at level 1 by submitting an application in the manner prescribed by the **SRA**.
- 6.2 After *you* have registered with the **SRA** under regulation 6.1, *you* will be granted *full accreditation* at level 1.

Regulation 7: Registration and Provisional accreditation at level 2, 3 or 4

- 7.1 *You* may register to conduct criminal advocacy at levels 2, 3 or 4 by submitting an application in the manner *prescribed* by the **SRA**.
- 7.2 After *you* have registered with the **SRA** under regulation 7.1, *you* will be granted *provisional accreditation* at *your* chosen level.
- 7.3 Subject to regulation 8.2 below, if *you* have been granted *provisional accreditation* at level 2, 3 or 4 *you* must apply to the **SRA** for *full accreditation* at *your* chosen level within 24 months of the date *you* were granted *provisional accreditation*.

SRA BOARD
11 March 2015



CLASSIFICATION – PUBLIC

- 7.4 If *you* do not apply for *full accreditation* or for an extension of time under regulation 18 within 24 months of the date *you* were granted *provisional accreditation*, *you* will not be *accredited* under these regulations.

Regulation 8: Full accreditation at level 2

- 8.1 Subject to regulation 8.2, if *you* do not intend to undertake trials, *you* may apply for *full accreditation* at level 2 by submitting an application in the manner *prescribed* by the *SRA*.

Guidance note:

- (i) A list of approved assessment organisations is available via *our* website – www.sra.org.uk. The assessment shall be in the form approved by *us* for the purpose.

- 8.2 If *you* do not intend to undertake trials and *you* have obtained *your higher courts advocacy qualification* for *criminal advocacy* by assessment in accordance with the *SRA Higher Rights of Audience Regulations*, *you* will automatically be granted *full accreditation* and will not be required to apply for *re-accreditation* until such time as is *prescribed* by the *SRA*.

- 8.3 If *you* intend to undertake trials *you* may apply for *full accreditation* at level 2 by submitting:

- (a) an application in the manner *prescribed* by the *SRA*; and
- (b) the *prescribed* number of *CAEFs* obtained in the *prescribed* manner in accordance with the *QASA* demonstrating that *you* have met the level 2 competencies set out in the *QASA* in level 2 trials.

Regulation 9: Full accreditation at Levels 3 and 4

- 9.1 *You* may apply for *full accreditation* at levels 3 or 4 by submitting:

- (a) an application in the manner *prescribed* by the *SRA*;
- (b) the *prescribed* number of *CAEFs* obtained in the *prescribed* manner in accordance with the *QASA* demonstrating that *you* have met the required competencies set out in the *QASA* in trials at that level.

Regulation 10: Level 2 advocates intending to undertake trials

- 10.1 If *you* are *provisionally accredited* in accordance with regulation 7 or *fully accredited* in accordance with regulation 8.1 or 8.2 at level 2 and intend to undertake trials, *you* must:

SRA BOARD
11 March 2015



CLASSIFICATION – PUBLIC

- (a) notify the SRA of *your* intention to undertake level 2 trial work in the manner *prescribed* by the *SRA*; and
- (b) within 24 months of the *SRA* accepting such notification submit the prescribed number of *CAEFs* obtained in the *prescribed* manner in accordance with the *QASA* demonstrating that *you* have met the level 2 competencies set out in the *QASA* in level 2 trials.

Regulation 11: Progression to level 3 or 4

- 11.1 If *you* are *fully accredited* in accordance with regulation 8.3 at level 2 or are *fully accredited* at level 3, and in either case *you* intend to progress to the level above, *you* must:
- (a) notify the *SRA* of *your* intention to progress in the manner *prescribed* by the *SRA*; and
 - (b) within 12 months of the *SRA* accepting such notification submit the *prescribed* number of *CAEFs* obtained in the *prescribed* manner in accordance with the *QASA* demonstrating that *you* have met the required competencies set out in the *QASA* in trials at the level at which *you* are *fully accredited*.
- 11.2 After *you* have complied with the requirements of regulation 11.1 above, *you* may be *provisionally accredited* at the next level and *you* may apply for *full accreditation* under regulation 9 above within 12 months of the date *you* were granted *provisional accreditation*.
- 11.3 If *you* do not apply for *full accreditation* or for an extension of time under regulation 18 within 12 months of the date *you* were granted *provisional accreditation*, *you* will revert to the level at which *you* were *fully accredited*.

Part 4: Accreditation for new practitioners

Regulation 12: Application of Part 4

- 12.1 Part 4 of these regulations applies to *you* if *you* were admitted as a *solicitor* or became an *REL* after 1 September 2015.

Regulation 13: Accreditation at level 1

- 13.1 When *you* are either issued with *your* first practising certificate or become an *REL*, *you* will be granted *full accreditation* at level 1 subject to registration in the manner *prescribed by the SRA*.

SRA BOARD
11 March 2015

CLASSIFICATION – PUBLIC



Regulation 14: Accreditation at level 2

- 14.1 If *you* obtain the *higher courts advocacy qualification* for *criminal advocacy* by assessment, *you* will be granted *full accreditation* at level 2 subject to registration in the manner *prescribed by the SRA*.
- 14.2 If *you* intend to undertake trials at level 2, *you* must comply with regulation 10 above.

Regulation 15: Progression to level 3 or 4

- 15.1 If *you* are *fully accredited* in accordance with regulation 10 at level 2 or are *fully accredited* at level 3, and in either case *you* intend to progress to the level above, *you* must comply with regulation 11 above.

Part 5: Practitioners returning to QASA

Regulation 16: Procedure for returning to QASA

- 16.1 If *your accreditation* has lapsed, *you* may apply to re-enter *QASA* by complying with the procedures set out in Part 3 of these regulations.
- 16.2 If *your accreditation* has lapsed and *you* are applying for *accreditation* at level 1, *you* must submit evidence of assessed continuing professional development in the field of *criminal advocacy* in the period since *you* were first accredited at level 1 or since *your* most recent *re-accreditation*.

Guidance note:

- (i) *You* may tell *us* that *you* no longer wish to conduct *criminal advocacy*, in which case *you* should write to notify *us* and *we* will stop corresponding with *you* about *accreditation* or *re-accreditation*.

Part 6: Re-accreditation, special circumstances and appeals

Regulation 17: Re-accreditation

- 17.1 Subject to regulation 8.2 above, if *you* are *accredited* to conduct *criminal advocacy*, then *you* must apply for *re-accreditation* at *your* current level in the manner *prescribed* by the *SRA* within five years of the date *you* were first *accredited* or *your* most recent *re-accreditation* at that level.

SRA BOARD
11 March 2015



CLASSIFICATION – PUBLIC

- 17.2 The **SRA** may where it thinks appropriate ask **you** to apply for **re-accreditation** within a different period to that specified in regulation 17.1 above and **you** must comply with such a request.
- 17.3 **You** must supply appropriate evidence to support **your** application for **re-accreditation** demonstrating **your** competence to conduct **criminal advocacy** in accordance with the **QASA**.
- 17.4 If **you** fail to apply for **re-accreditation** within the period required by the **SRA** and have not been granted an extension of the period under regulation 18, **your accreditation** at **your** current level will lapse.
- 17.5 If **you** do not satisfy the requirements for **re-accreditation**, **your accreditation** at **your** current level will lapse and **you** will be **provisionally accredited** at the level below.

Regulation 18: Special circumstances

- 18.1 **You** may, on application to the **SRA**, apply for an extension of the period for **accreditation** or **re-accreditation**, which the **SRA** may grant. An extension of the period for **accreditation** or **re-accreditation** may be granted on such terms as the **SRA** sees fit.
- 18.2 **You** may, on providing the **SRA** with adequate reasons, apply for an independent assessment of **your** competence to conduct **criminal advocacy** at levels 2, 3 or 4 and submit such an assessment in place of one or more **CAEFs**.
- 18.3 An application under regulation 18.1 for an extension of the period for **accreditation** or **re-accreditation** must be made before the expiry of the date by which the relevant application for **accreditation** or **re-accreditation** must be made.

Regulation 19: Additional measures

- 19.1 The **SRA** may receive at any point during the currency of **your accreditation CAEFs** which raise a concern about **your** competence to conduct **criminal advocacy**. Where the **SRA** receives any such concern, either because **you** have provided such information or otherwise, the **SRA** may do one or more of the following:
- (a) appoint an independent assessor to conduct an assessment of **your criminal advocacy**;
 - (b) require **you** to take specific steps;

SRA BOARD
11 March 2015



CLASSIFICATION – PUBLIC

- (c) revoke *your accreditation* at *your* current level; or
- (d) where such concerns amount to a breach of the *Principles*, refer *you* for consideration of disciplinary action.

Guidance note:

- (i) *We* will inform *you* and provide *our* reasons for taking action in any case where regulation 19 is relied upon.

19.2 Where *you* have applied for *accreditation* or *re-accreditation* at level 1 and *your* application has been refused, *you* will not be entitled to accept any instructions to conduct *criminal advocacy* and the *SRA* may recommend *you* to take specific steps in accordance with regulation 19.1 before *you* reapply for *accreditation* or *re-accreditation* as appropriate.

19.3 Where the *SRA* has required *you* to take specific steps under regulation 19.1(b), the *SRA* shall assess the outcome of that action before deciding upon any pending application or further application that *you* may have submitted or any further action that the *SRA* intends to take.

Regulation 20: Appeals against decisions

- 20.1 *You* may within 28 days of receiving notification of the *SRA's* decision appeal against that decision.
- 20.2 *You* may not appeal to the *SRA* against a decision by an assessment organisation where you have failed an assessment.
- 20.3 *You* may not appeal to the *SRA* against an evaluation by an external assessor or a Judge.

Part 7: Repeal, commencement and transitional provisions

Regulation 21: Repeal, commencement and transitional provisions

- 21.1 The *SRA Quality Assurance Scheme for Advocates (Crime) Notification Regulations* shall cease to have effect on 30 September 2013.
- 21.2 These regulations come into force on 30 September 2013 but shall be implemented in accordance with a timetable *prescribed* by the *SRA*.
- 21.3 Subject to regulation 21.4, *you* must register under Part 3 of these regulations in accordance with the timetable *prescribed* by the *SRA*.

SRA BOARD
11 March 2015



CLASSIFICATION – PUBLIC

21.4 After the relevant date in the timetable *prescribed* by the *SRA*, *you* must be *accredited* in accordance with these regulations before *you* undertake any *criminal advocacy*.

Draft SRA Quality Assurance Scheme for Advocates (Crime) (Amendment) Rules [2015]

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

Made under sections 2, 79 and 80 of the Solicitors Act 1974 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 [30 April 2015].

Rule 1

The SRA Quality Assurance Scheme for Advocates (Crime) Regulations 2013 shall be amended as follows:

- (a) in regulation 8.1, delete “enclosing an assessment by an assessment organisation approved by the SRA demonstrating that you have met all the competencies as set out in the QASA”;
- (b) in regulation 8.2, replace “,” with “such time as is prescribed by the SRA.” and delete parts (a) and (b);
- (c) in regulation 13.1 after “level 1” insert “subject to registration in the manner prescribed by the SRA”;
- (d) in regulation 14.1 after “level 2” insert “subject to registration in the manner prescribed by the SRA”;
- (e) in regulation 21.2 replace “the table set out below;” with “a timetable prescribed by the SRA.”, and delete “in phases.” and “the table of dates and circuits”;

SRA BOARD
11 March 2015

CLASSIFICATION – PUBLIC



(f) replace regulation 21.3 with "Subject to regulation 21.4, you must register under Part 3 of these regulations in accordance with the timetable prescribed by the SRA."

(g) in regulation 21.4 replace "dates for each circuit" with " date in the timetable prescribed by the SRA" and delete ", as set out in the table at regulation 21.2 above" and "in that circuit".

Rule 2

These amendment rules come into force on 30 April 2015 or the date of approval of the Legal Services Board, whichever is the later.

