

# **Analysis of responses to consultation on amendments to the SRA Higher Rights of Audience Regulations 2011**

Education and Training Unit

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## Why we consulted and the current position

The Higher Rights of Audience Regulations were introduced in April 2010. One of the policy objectives on implementing the 2010 Regulations was to simplify the routes to gaining the qualification so that it could only be obtained after passing an assessment. The SRA's submission to the Ministry of Justice stated:

"There will be *only one route* to qualification and it will be based on *an assessment of advocacy skills*."

The aims of the regulations are:

- To provide an assurance to consumers, the judiciary and other stakeholders that solicitor advocates have been assessed as competent to advocate in the higher courts
- To protect the client and public interest
- To ensure the effective administration of justice and the rule of law

The 2010 Regulations allow for lawyers from other jurisdictions to apply to the SRA for the higher rights of audience qualification on the basis of an equivalent qualification in that jurisdiction. This provision was carried over from the previous regulations - the Solicitors Higher Courts Qualifications Regulations 2000.

## What we consulted on

The current drafting of the Higher Rights of Audience Regulations 2010 enables internationally qualified lawyers to seek recognition of their international (or intra-UK) higher rights qualifications by providing the SRA with evidence of their practical experience and qualifications gained outside of England and Wales.

The SRA's aim is to close this option, for the following reasons:

- the 2010 Regulations were intended to introduce assessment as the only method of gaining the qualification to ensure robust regulation of the higher rights qualification
- this option for international candidates is inconsistent with the Qualified Lawyers Transfer Scheme Regulations which, again for the regulatory reasons of being able to robustly assess and maintain entry standards, has replaced the experience requirements
- it potentially makes it easier for internationally qualified lawyers to qualify for higher rights of audience, than domestically qualified candidates
- all international (i.e. not EEA) candidates that are eligible under the 2010 Regulations will be solicitors of England and Wales (having qualified under QLTR or QLTS), therefore it is logical to treat them in the same way as any other qualified England and Wales solicitor
- it is inconsistent with the robust regulatory approach to advocacy of the Quality Assurance Scheme for Advocates (QASA).

The consultation therefore asked the following question:

"Do you agree that the SRA should treat all applicants for higher rights of audience in the same way<sup>1</sup>? This would mean that all candidates have to take the same assessments to gain the higher rights of audience qualification."

## **Key themes/findings**

22 responses were received in total, made up of 14 individuals, 2 firms, 5 Law Societies/representative bodies and the Legal Services Commission (LSC).

14 of the responses were clearly in favour of the proposal and 6 were clearly against. Therefore there was overall support for the proposal.

### **Equality impacts**

The only comment made in relation to equality impact was by David Merkel, Chairman of the Lawyers with Disabilities Division, who said:

"the SRA must observe and implement all necessary compliance measures to incorporate diversity issues and special needs. To this end it must ensure proper equality of opportunity for all applicants."

## **Future action**

The proposal will now be taken to the Education and Training Committee on 9 November 2011, and if approved, to the SRA Board on 7 December 2011. If the SRA Board approves the policy it will then be sent to the LSB for their consideration, with a view to its implementation at the next available opportunity.

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<sup>1</sup> Applicants benefitting from Directive 2005/36 (Recognition of Professional Qualifications) will still, by law, be able to have their qualification individually assessed.

## Summary of responses and SRA's position

Over 57% of respondents were clearly in favour of the SRA's proposed changes to the Higher Rights of Audience Regulations. Each of the representative bodies (i.e. those representing significant numbers of individuals) supported the proposals.

Herbert Smith commented

"We support the SRA's proposal that all applicants be required to take the assessments to obtain their higher rights. In our view this is the only means by which the SRA can ensure that high standards are maintained across the board. The Higher Rights qualification is, rightly, considered a prestigious qualification for solicitors to obtain. It is logical that all applicants for the qualification are required to undergo the same rigorous process so that the SRA can be satisfied that everyone has acquired the necessary skills and attained the requisite standards in each of the competencies required. There is no guarantee that this will be the case if overseas lawyers are allowed to gain the qualification on the basis of their experience and qualifications gained in their jurisdiction. It is in the interests of both the profession as a whole as well as each law firm that every solicitor-advocate has the skills to act as effective advocates."

The LSC remarked on its relevance to QASA and the quality of advocacy as a whole:

"The SRA proposal to treat all applicants for higher rights of audience in the same way is ... consistent with both the stated aims of QASA and the LSC's minimum requirements for an operational quality assurance scheme. Requiring all candidates to take the same assessments to gain the higher rights of audience qualification is an important step towards implementing a robust, fair and comprehensive quality assurance framework for advocacy that it will provide common quality standards both across and within the professions and ensure a level playing field."

There were however some strong views put against the proposals. For example, a lawyer who is dual qualified in England and Wales and Ontario commented that:

"Requiring experienced advocates from another common law jurisdiction to undertake expensive and time-consuming assessments serves no valid regulatory purpose and will create further unnecessary barriers to the international mobility of top advocates."

## **SRA response**

The responses received have reinforced our earlier conclusions that it is in the public interest, fair and transparent to ensure that all solicitors with higher rights of audience have met the same standard. It cannot be in the interests of the consumer to have variable standards of advocacy applied by the regulator.

## List of respondents

Andrew Siddle

Association of Women Solicitors

City of London Law Society

David Haley

David Merkel, Chairman, Lawyers with Disabilities Division, The Law Society

Francis X. Halligan, Jr., Esq.

Frank Purdy

Justin Day

Helen Doshi

Herbert Smith

Josh Hunter

Legal Services Commission

Liz Bashforth

Newcastle Upon Tyne Law Society

Phyllis Laidlaw

Mark Frost

Samantha Davies

The Law Society

Rafael Orbaneja

Ryan Hogarty

Sergey Naumkin

Steven Reynolds - Reynolds Colman Bradley LLP