

Application made by the Solicitors Regulation Authority Board to the Legal Services Board under Part 3 of Schedule 4 to the Legal Services Act 2007, for the approval of changes to regulatory arrangements to remove the SRA Quality Assurance Scheme for Advocates (Crime) Regulations 2013

A Summary

1. The SRA Quality Assurance Scheme for Advocates (Crime) Regulations 2013 were approved by the Legal Services Board (LSB) to implement the Quality Assurance Scheme for Advocates (QASA).
2. In March 2019, our Board took the decision to revoke these regulations and not proceed with implementation of the scheme. This decision was based on our view that the scheme is neither a targeted nor proportionate regulatory tool to effectively assure the standards of solicitors practising criminal advocacy.
3. This application therefore seeks approval for a change to our regulatory arrangements to remove the SRA Quality Assurance Scheme for Advocates (Crime) Regulations 2013. Our proposal will remove rules Part 1 to Part 7.

B Details of the current QASA arrangements

4. QASA was developed following a review into the procurement of legal aid by Lord Carter in 2006. The report highlighted concerns about standards of criminal advocacy. It suggested that a quality assurance scheme could be introduced.
5. After some initial work by the Ministry of Justice and the then Legal Services Commission, the three primary regulators of criminal advocacy – the Bar Standards Board (BSB), ourselves and CILEx Regulation (CILEx) – established the Joint Advocacy Group in 2009 to develop QASA.
6. QASA was designed to ensure competent advocacy in the criminal courts by:
 - a) introducing common advocacy standards, applicable to all criminal advocates
 - b) assessment by judicial evaluation in live criminal trials in the higher courts
 - c) accreditation of advocates at four levels, to reflect the varying levels and complexity of criminal cases. Accreditation would last for a maximum of five years after which the advocate would need to be re-accredited
 - d) Judges could raise concerns about advocates with regulators outside the formal accreditation process.
7. The scheme was approved by the LSB in July 2013. However, a stay of the implementation of QASA was granted as part of judicial review proceedings brought by the Criminal Bar Association until 2015, when the Supreme Court dismissed the application. Then in October 2015, the Ministry of Justice issued a consultation paper proposing a separate quality assurance scheme for publicly funded advocacy. Consideration of this proposal further delayed

implementation for example, creating uncertainty within the judiciary as to the level of resources required to support both schemes QASA cannot be implemented without judicial assessment of advocates in live trials.

8. We have no intention to implement QASA. Our view is that the scheme is no longer consistent with our modern, evidence based and targeted approach to regulation. It imposes a blanket requirement on all solicitors to be formally and periodically assessed, despite the fact they have already been assessed through the qualification process, and regardless of whether we have concerns about their competence. If implemented, this would result in unnecessary regulatory burdens and cost on competent solicitors.
9. We note that the BSB has also taken the decision not to implement QASA and in 2018, the LSB approved an application from the BSB to remove QASA rules from their regulatory arrangements. In addition, QASA was developed jointly with the BSB and CILEx to provide a consistent way of assuring the standards of all advocates practising in the criminal courts, and we do not consider it appropriate or practicable to implement the scheme independently, for solicitor advocates only.

C Nature and effect of the proposed alterations to the SRA's regulatory arrangements

10. In March 2019, our Board made the SRA Commencement and Revocation Rules 2019 (Annex 1) and we notified the LSB. The bulk of the SRA Commencement and Revocation Rules 2019 set implementation dates for the SRA Standards and Regulations, which had previously been approved by the LSB on 5 November 2018.
11. But, the SRA Commencement and Revocation Rules 2019 also provide for the removal of SRA Quality Assurance Scheme for Advocates (Crime) Regulations 2013. This is a change to our regulatory arrangements not covered in our 2018 application for the Standards and Regulations. We therefore seek the LSB's approval for that element of the SRA Commencement and Revocation Rules 2019, which will revoke our QASA regulations.

D Rationale for removing our QASA regulations

12. Removal of our QASA rules gives effect to the decision not to implement QASA and enables us to remove redundant regulations.
13. Our decision to remove these rules is based on our view that the scheme is not a targeted or proportionate regulatory tool to address concerns about the standard of criminal advocacy. QASA is not in line with our risk and evidence based regulatory approach.
14. In addition to the reasons we have set out in paragraphs 7-9, there is also lack of robust evidence as to the nature and scale of any issues regarding the standard of criminal advocacy provided by solicitors. For example, our research¹ with the BSB into judicial perceptions of criminal advocacy suggests that standards are generally adequate but there are pockets of poor practice. We also receive relatively few reports of poor advocacy from judges and the

¹ SRA and BSB Judicial Perceptions study 2018 and Thematic Review into Criminal Advocacy Standards 2018

Courts. Only 89 complaints were received between 1 January 2015 and 28 February 2018. Of these, only three per cent related specifically to the solicitor's competence.

15. Most concerns raised about the standard of advocacy relate to the Higher Court. Our research (Annex 3) shows that most solicitors practice in the magistrates' court but QASA would apply to all solicitors undertaking advocacy in all courts. It would require all solicitors to be formally and periodically assessed, despite the fact they have already been assessed through the qualification process, and regardless of whether we have concerns about their competence.
16. We do not consider that our proposal to remove our QASA rules creates a significant risk to standards of solicitors providing criminal advocacy. The scheme has never been implemented and therefore has never offered the quality assurance of criminal advocates it was designed to do.

D1 Current SRA regulatory arrangements to assure standards

17. As a public interest regulator, we are committed to making sure that solicitors practising criminal advocacy meet the high standards we and the public expect. In doing so, our approach should be proportionate, targeted and based on clear evidence of risk.
18. We already have in place regulatory tools that enable us to assure the standard of advocacy at qualification, post qualification, for practising in the Higher Courts and to take appropriate regulatory action.
19. We automatically grant all solicitors rights of audience in the lower courts (the magistrates court and the county court) upon admission. By then, they must have passed advocacy assessments, on the Legal Practice Course (aligned to basic skills needed for day one as a trainee) and the Professional Skills Course (aligned to rights of audience on admission).
20. The Solicitors Qualifying Examination (SQE), once introduced, will require all intending solicitors to undertake an advocacy assessment. This will ensure that advocacy skills are robustly and consistently assessed through a plea-only or interim application.
21. We require all solicitors who want to practise advocacy in the higher courts (the crown court and high court) to pass an additional assessment (Higher Rights of Audience (HRA)) qualification which tests their knowledge of evidence, procedure, witness handling, ability to conduct a full trial and ethics in the higher courts and their advocacy skills.
22. Following admission, solicitors also have an obligation under our existing rules to only act where they are competent to do so This will continue to be the case when our Standards and Regulations are introduced in November 2019.
23. Our continuing competence regime requires all solicitors to regularly reflect on the quality of their practice and address any identified learning and development needs. An annual declaration is required by all solicitors to tell us that they have done this. We follow up with solicitors who have not completed this declaration.

24. Solicitors should use our Statement of Solicitor Competence to do this. The statement includes the competences required for safe and effective advocacy practice, for example, presenting a reasoned argument in a clear, logical, succinct and persuasive way and dealing with witnesses appropriately.
25. In 2016, we introduced resources to help solicitors practising in the youth courts to maintain the standard we expect. We also produced a leaflet for young people and stakeholders to help explain the standard they should expect from their solicitor. This included an email address which they could use to raise concerns with us about their solicitor.

D2 Future SRA regulatory arrangements to assure standards

26. We are currently consulting on proposals to enhance these regulatory arrangements to assure the standards of solicitors practising criminal advocacy.
27. For the avoidance of doubt, our application to remove QASA rules is independent of the outcome of this consultation.
28. However, if implemented, these measures will offer further assurances that solicitors practising criminal advocacy meet the standards we and the public expect. Our proposals include:
 - a) revising our arrangements for higher court advocacy
 - b) providing enhanced resources to help solicitors meet our standards
 - c) supporting reports about advocacy standards to help us act when we have concerns about a solicitor's competence to conduct advocacy.
29. We expand on these areas below.

Reviewing our arrangements for higher court advocacy

30. We are consulting on revised criminal HRA standards. Our existing standards have been developed to ensure that they properly reflect and assess the competences required by modern day higher court advocates, for example, our revised standards will include more of a focus on witness handling and dealing with vulnerable clients. We have worked with a range of stakeholders, including criminal solicitors, to develop and test the revised standards prior to consultation. We also propose to further ensure that candidates seeking criminal (and civil) HRA are robustly and consistently assessed by proposing that we appoint a single provider (rather than the current multiple providers) provider to assess HRA candidates.
31. We are aware that some aspiring solicitors take the HRA assessment as an elective course on the PSC, before they have been admitted. We do not consider this to be appropriate for an advanced assessment of rights which only admitted solicitors may exercise.
32. We are proposing a change to our regulations to make clear that the HRA assessment may only be attempted by admitted solicitors. This gives time for solicitors who wish to conduct higher court advocacy to get more experience of

advocacy practice, through observation, or conducting simple applications or trials in the lower courts.

33. We propose requiring solicitors practising in the youth court to have the criminal HRA qualification where they are acting as an advocate in any case which would go to the crown court if it involved an adult. The jurisdiction of the youth court has changed to include most cases against an adult under 18, except for murder, manslaughter and certain firearms offences.
34. Advocacy practice rights have not been amended to reflect the changed jurisdiction of the youth court. This presents a risk to children being prosecuted in the youth court. It puts them at a disadvantage compared to adult clients, even though they are likely to be more vulnerable. Our proposal will reduce this risk and protect young people by ensuring that solicitors dealing with these serious and complex cases have been assessed against HRA standards.

Providing enhanced resources to help solicitors meet our high standards

35. We recognise that practising criminal and civil advocacy presents specific challenges. We propose in our consultation to build on our existing youth court resources and further support solicitors practising criminal advocacy by:
 - a) producing clear examples of the standards we expect
 - b) developing online resources which can concentrate on areas of concern, for example, building trust with Black and Minority Ethnic clients
 - c) publishing aggregated and anonymised data on reports to help solicitors focus on maintaining their competence.

Supporting reporting

36. We know that many stakeholders, for example, the judiciary and the public, do not raise concerns with us when they witness poor advocacy. For us to address concerns about the standard of advocacy, we need robust evidence on the scale and nature of concerns so that we can take targeted and appropriate action.
37. Encouraging reporting will help us do this. Our consultation proposes several measures to achieve this:
 - a) simplifying our online reporting process so it is easier to find and complete
 - b) developing alternative approaches so that judges can report quickly
 - c) working with stakeholders and the judiciary to help them understand
 - i. when and how to make a report to us
 - ii. what we do when we receive a report, how we decide whether to act and the types of action we can take.

E. Statement in respect of the Regulatory Objectives

38. We have assessed our proposal against the Regulatory Objectives. We outline our findings below.

E1. Protecting and promoting the public interest

39. Removal of QASA rules will not have a detrimental impact on this objective – the QASA rules have never been implemented. Our current regulatory arrangements ensure that the standard of solicitors is assured and that the public have confidence in the representation they receive and in the overall legal system. Our consultation proposals if implemented will enhance our existing regulatory arrangements to assure the standards of solicitors practising criminal advocacy.

E2. Protecting and promoting the interests of consumers

40. Removal of the QASA rules will not have a detrimental impact on this objective. The scheme was never implemented. Our existing arrangements ensure that solicitors we regulate providing criminal and civil advocacy meet the standards we and the public expect.

E3. Supporting the constitutional principle of the rule of law

41. Our existing regulatory arrangements support the principle of the rule of law by ensuring that solicitors act with competence and integrity in their dealings with the courts. As QASA was never implemented, removal of regulations will not undermine this regulatory objective.

E4. Promoting competition in the provision of services

42. As QASA was never implemented, we do not consider that our proposal impacts on the competition and the provision of services. QASA, if implemented, requires all solicitors to be accredited and reaccredited. Our view is that the cost of this requirement could result in some practitioners leaving the market, reducing competition and in some cases reducing public access to competent solicitors. Our existing and proposed regulatory arrangements are designed to ensure that we do not place unnecessary regulatory burdens on solicitors and firms which may distort provision of services.

E5. Improving access to justice

43. The proposal to remove QASA regulations does not negatively impact on access to justice. As explained above, if implemented, QASA may have reduced access to justice for some members of the public.

E6. Encouraging an independent, strong, diverse and effective legal profession

44. The proposals will have a neutral impact on encouraging an independent, strong, diverse and effective legal profession.

E7. Increasing public understanding of the citizen's legal rights and duties

45. The proposals will have a neutral impact on the public understanding of the citizen's legal rights and duties.

E8. Promoting and maintaining adherence to the professional principles

46. Our current approach to assuring the standard of solicitors practising criminal advocacy will not be negatively impacted by the withdrawal of our QASA rules.

F. Statement in respect of the Better Regulation Principles

47. We have assessed our proposal against the Better Regulation proposals.

F1. Transparent

48. These regulations are redundant. If they are not removed, they create confusion for solicitors as to their regulatory obligations. We will communicate the rule change with those that we regulate if approved.

F2. Accountable

49. We considered very carefully whether to implement QASA. We are confident that the public interest and of the protection of consumers will not be undermined by our decision as the scheme has not been implemented.

F3. Proportionate

50. Given the limited evidence available on the size and nature of concerns about the standard of solicitors providing criminal advocacy, we do not consider QASA to be a proportionate response to assuring standards. Removal of the QASA regulations and our decision not to implement the scheme reflects our evidence and risk-based approach to regulation.

F4. Consistent

51. Our proposal to remove QASA regulations is consistent with our targeted, evidence based and proportionate approach to regulation and with the approach adopted by other regulators.

F5. Targeted at cases where action is needed

52. QASA was not risk based or outcomes focussed and does not align with our targeted regulatory approach. It applied to all solicitors practising criminal advocacy irrespective of whether there were concerns with their practice.

G. Statement in relation to desired outcomes

53. The removal of the QASA regulations will remove unnecessary and redundant regulations from our rules. If agreed, we will remove the rules from our regulatory arrangements, and they will not appear in our Standards and Regulations which will come into effect in November 2019

H. Stakeholder engagement

54. We do not consider a formal consultation to remove our QASA regulations appropriate. Given that the scheme has not been implemented this is a minor change to our rules. We have engaged with our Criminal Advocacy Reference Group² to discuss how we can best assure the standards of criminal advocacy. There has been positive feedback to the proposal not to proceed with QASA.

I. Statement in relation to impact on other Approved Regulators

² A group of cross sector stakeholders we regularly convene to discuss our approach to criminal advocacy.

55. Our proposals do not give rise to any conflict between any of the Approved Regulators. The BSB has already had an application to remove QASA rules approved.
56. We remain committed to working with other approved regulators to adopt a consistent approach to assuring standards. For example, we have worked closely with the BSB on our education and training reforms and standards to ensure consistency where possible. There is also broad alignment in how the primary advocacy regulators set competency expectations and monitor the profession against them. We are also in discussion with other approved regulators to explore how we can collaborate to deliver our consultation proposals if implemented, for example, we are working the BSB and the SRA have worked closely together on education and training reform to ensure consistency where possible.

J. Implementation timetable

57.

21 August 2019	Consultation on our new proposals
30 August 2019	SRA application to LSB for approval of changes to regulatory arrangements to remove the SRA Quality Assurance Scheme for Advocates (Crime) Regulations 2013
September 2019	LSB approval (if within 28 days of application)
25 November 2019	Implementation of the new Standards and Regulations with the QASA regulations removed

K. SRA contact for matters relating to this application

58. If the Legal Services Board has any queries in relation to this application, please contact:

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- Annex 1** SRA Commencement and Revocation Rules 2019
- Annex 2** SRA report: An evaluation of the new approach to continuing competence
- Annex 3** SRA report: Research on advocacy in the profession
- Annex 4** SRA consultation on assuring advocacy standards