



## **Legal Services Board decision notice issued under Part 3 of Schedule 4 to the Legal Services Act 2007**

### **The Solicitors Regulation Authority (SRA) application for approval of amendments to the SRA Higher Rights of Audience Regulations 2011**

The Legal Services Board (LSB) has approved the SRA's amendments to the SRA Higher Rights of Audience Regulations 2011. The amendments will remove the right of foreign lawyers who cannot benefit from Directive 2005/36/EC (Recognition of Professional Qualifications) to have their work experience in their home jurisdiction assessed to determine whether they meet the standards of the higher rights of audience qualification.

This application was one of five applications submitted to the Board by the SRA on 14 and 15 March 2012. The five applications are subject to five separate decisions.

This decision notice sets out the basis for the LSB approval and the decision taken, including a brief description of the changes.

#### **Introduction**

1. The LSB is required by Part 3 of Schedule 4 to the Legal Services Act 2007 (the Act) to review and approve or reject alterations to the regulatory arrangements of the approved regulators. The SRA is an approved regulator.
2. Paragraph 25 of Schedule 4 to the Act explains that the LSB may only refuse an application setting out a proposed change to the regulatory arrangements if it is satisfied that by granting the application one or more of the criteria specified in sub paragraph 25(3) (and listed in the footnote below<sup>1</sup>) will be met. Most notably, the LSB's granting of the application to alter the regulatory arrangements must not be prejudicial to the regulatory objectives overall. Accordingly, 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 at least the parts of it that can be approved when only part of the application meets the criteria.

---

<sup>1</sup> The Board may refuse the application 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 the 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 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. As provided for by paragraphs 20(1) and 23(3) of Schedule 4 to the Act, the LSB has made rules<sup>2</sup> about how the application to alter the regulatory arrangements must be made including the contents of that application. The rules highlight the applicant's obligations under section 28 of the Act to have regard to the Better Regulation Principles. The rules also require that the applicant provides information about the nature and effect of each proposed change and of appropriate consultation undertaken. Sub paragraph 25(3)(f) of Schedule 4 to the Act requires that each proposed alteration has been made or is likely to be made in accordance with the procedures (whether statutory or otherwise) which apply in relation to the making of the alteration. This therefore includes the LSB's rules.
4. The chronology for the LSB's handling of this application can be found towards the end of this decision notice.

## Decision

5. The SRA has proposed a change to the SRA Higher Rights of Audience Regulations 2011. The change will affect those foreign lawyers who have gained admission to the solicitors' roll in England and Wales via the Qualified Lawyers Transfer Regulations 1990 and 2009 or the SRA Qualified Lawyers Transfer Scheme Regulations 2011 but who cannot benefit from Directive 2005/36/EC (Recognition of Professional Qualifications). Such lawyers will no longer be able to have their work experience from their home jurisdiction assessed by the SRA to determine whether they meet the standards of the higher rights of audience qualification.
6. Therefore, unless they benefit from Directive 2005/36/EC, foreign lawyers will only be able to undertake higher rights of audience work if they have undertaken the full higher rights of audience qualification.
7. In reaching its decision, the LSB has considered the barrier to undertaking advocacy that this change potentially creates. However, we are convinced by the SRA's arguments in its application. Namely, that the change will impact on a small number of applicants and that the risk is further alleviated by the need to ensure that those who gain higher rights of audience have demonstrated through undertaking the qualification that they are competent in both the law and the practice of England and Wales.
8. The LSB is satisfied that, having considered the SRA's application against the criteria in paragraph 25(3) of Schedule 4 to the Act, it considers that there is no reason to refuse this application; accordingly, the LSB grants this application.
9. The Annex to this decision notice contains the amendments to the SRA's Higher Rights of Audience Regulations 2011.

---

<sup>2</sup> Rules for Rule Change Applications – Version 2 (November 2010)

## **Chronology**

- The LSB confirmed receipt of this application on 15 March 2012.
- The 28 day initial decision period for considering the application ended on 11 April 2012.
- On 5 April 2012, the LSB issued an extension notice to the SRA extending the period in which the LSB would consider the five applications submitted by the SRA on 14 and 15 March 2012, of which this was one.
- This decision notice is being published on the LSB's website on 18 April 2012.

**Chris Kenny, Chief Executive**

**Acting under delegated authority granted by the Board of the Legal Services Board**

## Annex

### Proposed amendment to the SRA Higher Rights of Audience Regulations 2011

Regulation 4: Qualifying to exercise extended rights of audience	<p>In regulation 4.1 at the end of sub paragraph (a), delete “or”</p> <p>In sub-paragraph (b) delete “having gained an equivalent qualification in a <i>comparable jurisdiction</i> or a jurisdiction listed in Article 1 of the <i>Establishment Directive</i> and undertaken any further step(s) as may be specified by us under regulation 5;”</p> <p>and replace with “being an <i>REL</i> and having undertaken any further step(s) as may be specified by <i>us</i> under regulation 5.2; or”</p> <p>Insert new sub-paragraph (c): “being a lawyer to whom Directive 2005/36 applies and having undertaken any further step(s) as may be specified by <i>us</i> under regulation 5.2.”</p>
Regulation 5: Qualification gained in another jurisdiction	<p>In the title of regulation 5 delete “another” and replace with “a European”.</p> <p>In regulation 5.1 delete “a <i>qualified lawyer</i> in any <i>comparable jurisdiction</i> or a jurisdiction listed in Article 1 of the <i>Establishment Directive</i>” and replace with “an <i>REL</i> or a lawyer to whom Directive 2005/36 applies”.</p>