

**Application made by ILEX Professional Standards to the Legal Services Board under Part 3 of Schedule 4 to the Legal Services Act for the approval of an amendment to the Rights of Audience Conduct Rules 2011, to include provision for the Quality Assurance Scheme for Advocates (QASA) Notification procedure.**

**Proposal**

1. It is proposed that the Rights of Audience Certification Rules 2012 and AP Certification Rules 2011 are amended to include the provision for the Quality Assurance Scheme for Advocates (QASA) Notification Rule.
2. The purpose of the rule is to require criminal advocates to notify ILEX Professional Standards of their intention to enter the Quality Assurance Scheme for Advocates (QASA).
3. There is no alteration or amendment to any existing rule or provision. However, the rules will be submitted again towards the end of this year to incorporate the rules for implementation of the QASA at which point the notification rule will cease to have effect.

**Nature and effect of the Quality Assurance Scheme for Advocates Notification Rule.**

4. ILEX Professional Standards has been working with the Solicitors Regulation Authority and the Bar Standards Board through the Joint Advocacy Group since 2009, to develop a quality assurance scheme for advocates. ILEX Professional Standards intends to participate in a preliminary stage of the QASA which will require advocates intending to undertake criminal advocacy from the start of the QASA to notify ILEX Professional Standards of their intention to do so.
5. A separate notification rule has been developed by ILEX Professional Standards to cover this element of the scheme. Once the 4<sup>th</sup> consultation has been completed and the QASA finalised, application for the approval of the QASA together with revised rules will be submitted to the Legal Services Board.
6. The QASA is intended to provide a means of quality assuring the competence of advocates undertaking work in the criminal courts. Clients and consumers, those instructing and those who are required to make decisions in proceedings are dependent upon competent advocacy for the effective administration of justice. It is essential that all those who are involved in the litigation process can have

confidence in the standard of advocacy and the advocates. The QASA is based on a common set of standards against which all advocates will be assessed regardless of their original education and training pathway to qualification. The standards will apply across four levels of advocacy with Level 1 reflecting advocacy in the Magistrates Courts and Level 4 reflecting advocacy in the most serious and complex Crown Court cases. Advocates will be assessed to obtain their accreditation within the QASA and thereafter will have to seek reaccreditation once every five years. Advocates will be able to move through the levels by demonstrating through assessment that they meet the requirements for accreditation at the higher level.

7. At present there is no equivalent to the QASA in place within any of the regulators within JAG. The live elements of the QASA will launch at the end of 2012 when through a process of phased implementation, advocates will be required to register with their regulator to gain provisional accreditation at their self-assessed level and will then be required to acquire their full accreditation through assessment. The phasing of implementation will be divided into three stages based on groupings of circuits on which advocates work. As each phase commences, advocates will be given 3 months in which to register and obtain provisional accreditation and then a further period in which to go on and obtain full accreditation. Prior to that, to assist with planning for implementation and to provide further data for the Equality Impact Assessment, IPS and the SRA will require those members of its regulated community who will be required to enter the Scheme to complete the notification process.
8. Notification will involve the advocate providing six key pieces of information:
  - Confirmation of their intention to enter the scheme
  - Confirmation of their level as Level 1 criminal advocates
  - An indication of the circuit on which they undertake most of their criminal advocacy work
  - A request for equality and diversity data
  - The number and type of hearings dealt with
  - The number of Youth Court cases and any views on how QASA or an alternative accreditation scheme may improve advocacy in the Youth Court.
9. This information will be combined with data already held by ILEX Professional Standards to provide a comprehensive set of data about criminal advocates regulated by ILEX Professional Standards. This will assist with the planned 2 year review of the QASA proposed for April 2015.

10. The Regulations will require advocates to complete the notification process by 21 September 2012 (or as soon as they intend to practise criminal advocacy, whichever is the later). This will provide advocates with a period of just over two months to complete the notification process.
11. Advocates who are absent from the workplace during the period up to 21 September 2012 will still be able to notify us thereafter.
12. The Rule will be repealed by the coming into force of the Revised Rights of Audience Conduct Rules 2011, which will include the new QASA rules, later this year. Once the QASA regulations are in force, advocates will enter the scheme through registration or qualification and data will be obtained at that time.

### **Statement in respect of the regulatory objectives**

#### **Protecting and promoting the public interest**

13. QASA will ensure that advocates undertaking work in the criminal courts at all levels are competent to practise. The preliminary notification process will enable ILEX Professional Standards to acquire information about those who will be joining the scheme to support the long-term promotion of this regulatory objective.

#### **Protecting and promoting the interests of consumers**

14. QASA will give consumers increased confidence and assurance that those who undertake advocacy on their behalf are competent to do so. The notification process is a preliminary step to achieving that by providing ILEX Professional Standards with accurate and up to date information about those who will be joining the scheme, allowing us to confirm and update existing data.

#### **Encouraging an independent, strong, diverse and effective legal profession**

15. The notification process will provide an opportunity to gather data on CILEx advocates and where they work. As the QASA is implemented and developed, the data gathered through the notification process can be used to understand the impact of the Scheme in different areas and on different individuals.

16. We therefore consider that the notification process will support our objective of encouraging an independent, strong, diverse and effective legal profession. There is no impact on the other regulatory objectives or professional principles.

### **Statement in respect of the Better Regulation Principles**

#### **Proportionality**

17. Compliance with the notification requirements will be a simple and quick process which will contribute significantly to our understanding of the profile of criminal advocates amongst our regulated community.

#### **Accountability**

18. ILEX Professional Standards will be accountable for QASA by putting robust monitoring, evaluation and review processes in place, this will include our commitment to monitoring under the Equality Impact Assessment. The data gathered through the notification process will assist greatly in this process. Accountability for compliance with the QASA more generally will be addressed in the rule changes to be submitted later in the year

#### **Consistency**

19. IPS is also introducing notification requirements so that Level 1 advocates who will be affected by the QASA will be required to provide information about their intention to enter the scheme, the proposed level at which they will enter and the circuit on which they undertake most of their work.

#### **Transparency**

20. It is considered to be best practice to consult stakeholders before proposals are developed to ensure stakeholders' views and expertise are taken into account. The QASA proposals have to date been the subject of three formal consultations as well as significant stakeholder engagement activity; for instance, direct contact has been made with both Associate Prosecutors and Chartered Legal Executive Criminal Advocates for their views on the best approach to levels within the scheme. There will be a fourth and final consultation during 2012.

## **Targeted**

21. The notification process is specifically targeted at those advocates who will need to enter the Scheme.

## **Stakeholder engagement**

22. The JAG has issued three consultation papers to date (October 2009-January 2010, August 2010-November 2010 and August 2011-November 2011) and will issue a fourth during 2012. Prior to the JAG consultations there had been others on the subject of a quality assurance scheme for advocates issued by the Legal Services Commission.

23. Stakeholder engagement has continued to be an important factor in the development of the scheme:

- QASA Forum held at The Law Society in July 2011
- A range of workshops on specific proposals on the levels in November-December 2011
- Coverage in the Chair of the SRA Board's column in the Law Society's Gazette
- Attendance at a range of conferences and events arranged by stakeholders
- Presentations have been made to the black and minority ethnic groups represented at Lord Ouseley's External Implementation Group
- Meetings with the MoJ and CPS
- Attendance at a series of events for The Law Society's Advocacy Section in May-June 2012
- Webinars on aspects of the scheme (including one on 5 July 2012 to coincide with the coming into force of these Regulations)

**Annex:**

Amended Rights of Audience Certification Rules 2012 and AP Certification Rules  
2011 incorporating the Notification Rule

**Contact for matters relating to this application**

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