

[Draft] SRA Quality Assurance Scheme for Advocates (Crime) Regulations [2013]

Preamble

Authority: Made on [insert date] 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 [insert date]

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 *RELS* 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 *RELS* 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 *RELS* 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*.

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 to 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.

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:
- (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**.
- 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** 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**.

Guidance note:

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:
- (a) 2015, if **you** obtained **your higher courts advocacy qualification** for **criminal advocacy** in 2010; or
- (b) 2016, if **you** obtained **your higher courts advocacy qualification** for **criminal advocacy** in 2011, 2012 or 2013.
- 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:
- (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.

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.
- 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:

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-accrreditation, special circumstances and appeals

Regulation 17: Re-accrreditation

- 17.1 Subject to regulation 8.2 above, if **you** are **accredited** to conduct **criminal advocacy**, then **you** must apply for **re-accrreditation** 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-accrreditation** at that level.
- 17.2 The **SRA** may where it thinks appropriate ask **you** to apply for **re-accrreditation** 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-accrreditation** demonstrating **your** competence to conduct **criminal advocacy** in accordance with the **QASA**.
- 17.4 If **you** fail to apply for re-accrreditation 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-accrreditation**, **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-accrreditation**, which the **SRA** may grant. An extension of the period for **accreditation** or **re-accrreditation** 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-accrreditation** must be made before the expiry of the date by which the relevant application for **accreditation** or **re-accrreditation** must be made.

Regulation 19: Additional measures

- 19.1 The **SRA** may receive at any point during the currency of **your accreditation CAEFs** or any other information 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;

- (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:

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 phases in accordance with the table set out below.

Phase	Dates	Circuits
1	30 September 2013 – 9 March 2014	Midlands Western
2	10 March – 13 June 2014	South Eastern
3	30 June – 3 October 2014	Northern North Eastern Wales and Chester

- 21.3 **You** must register under Part 3 of these regulations in accordance with the dates set out in the table above for the Circuit within which **your** practising address falls or, where different, the Circuit within which **you** undertake the majority of **your criminal advocacy**.
- 21.4 After the relevant dates for each Circuit, as set out in the table at regulation 21.2 above, **you** must be **accredited** in accordance with these regulations before **you** undertake any **criminal advocacy** in that Circuit. **You** may only undertake **criminal advocacy** in that Circuit without **accreditation** if **you** undertake the majority of **your criminal advocacy** in a Circuit in which these regulations have not yet been implemented.