Draft SRA Quality Assurance Scheme for Advocates (Crime) Regulations [2012]

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 2014].

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 8.3 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 12 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 12 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 8.3, you may apply for full accreditation as trial capable 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 You may apply for full accreditation as trial active 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.

8.3 If you have been granted provisional accreditation as trial capable at level 2 and you obtained your higher courts advocacy qualification for criminal advocacy by assessment in [April 2010] or later, you will automatically be granted full
accreditation as trial capable 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 or 2012.

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 moving from trial capable to trial active

10.1 If you are provisionally accredited or fully accredited at level 2 as trial capable and intend to become trial active, 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 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 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 as trial active at level 2 or are fully accredited at level 3 and 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 2014].

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 as trial capable at level 2.

14.2 If you intend to move from trial capable to trial active 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 as trial active at level 2 or are fully accredited at level 3 and 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-accreditation, special circumstances and appeals

Regulation 17: Re-accreditation

17.1 Subject to regulation 8.3 above, if you are accredited to conduct criminal advocacy, then you must apply for re-accreditation 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-accreditation at that level.
17.2 The SRA may where it thinks appropriate ask you to apply for re-accreditation 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-accreditation demonstrating your competence to conduct criminal advocacy in accordance with the QASA.

17.4 If you fail to apply for re-accreditation 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-accreditation, 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-accreditation, which the SRA may grant. An extension of the period for accreditation or re-accreditation 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-accreditation must be made before the expiry of the date by which the relevant application for accreditation or re-accreditation must be made.

Regulation 19: Additional measures

19.1 The SRA may receive at any point during the currency of your accreditation CAEfS 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 require you to take specific steps or, where such concerns amount to a breach of the Principles, may refer them 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, 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 ask for that decision to be reviewed.

20.2 *You* may not apply to the **SRA** for a review of a decision by an assessment organisation where *you* have failed an assessment.

20.3 *You* may not apply to the **SRA** for a review of an evaluation by an external assessor or a Judge.

**Part 7 : Commencement and transitional provisions**

**Regulation 21: Commencement and transitional provisions**

21.1 These regulations come into force on [14 January 2013] but shall be implemented in phases in accordance with the table set out below.

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<thead>
<tr>
<th>Phase</th>
<th>Dates</th>
<th>Circuits</th>
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<tbody>
<tr>
<td>1</td>
<td>14 January - 12 April 2013</td>
<td>Midlands Western</td>
</tr>
<tr>
<td>2</td>
<td>17 June – 13 September 2013</td>
<td>South Eastern</td>
</tr>
<tr>
<td>3</td>
<td>16 September – 13 December 2013</td>
<td>Northern North Eastern Wales and Chester</td>
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21.2 Subject to 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.

21.3 After the relevant dates for each Circuit, as set out in the table at regulation 21.1 above, *you* must be accredited in accordance with these regulations before *you* undertake any criminal advocacy in that Circuit.
Draft Amendments to the SRA Handbook Glossary for the SRA QASA Regulations

**accreditation**

means either *full accreditation* or *provisional accreditation* under the *SRA QASA Regulations*.

**full accreditation**

means *accreditation* to conduct *criminal advocacy* under the *SRA QASA Regulations*.

**CAEF**

means a judicial evaluation form completed by a judge to record the competence of a *solicitor* or an *REL* to conduct *criminal advocacy* against the Statement of Standards contained in the *QASA*.

**provisional accreditation**

means accreditation to conduct *criminal advocacy* under the *SRA QASA Regulations* but which requires further steps to be taken to obtain *full accreditation*.

**QASA**

means the Quality Assurance Scheme for Advocates (Crime) developed by the Joint Advocacy Group and described in full in the QASA Handbook published from time to time and available at : http://www.sra.org.uk.

**re-accreditation**

means the process by which a solicitor or an REL demonstrates their competence and renews their *accreditation* under the *SRA QASA Regulations* at their existing level for a further five years.

**SRA QASA Regulations**

means the SRA Quality Assurance Scheme for Advocates (Crime) Regulations [2012].
trial active

means accredited to undertake all criminal advocacy work at level 1 and level 2 and non-trial criminal advocacy work at level 3.

trial capable

means accredited to undertake all criminal advocacy work at level 1 and all non-trial criminal advocacy work at level 2 or level 3.

you

for the purpose of these regulations means a solicitor or an REL, and references to "your" should be construed accordingly.