THE LAW SOCIETY OF NORTHERN IRELAND

The Instruction, qualification and conduct of authorised solicitors in the Higher Courts

Draft Regulatory Impact Assessment (RIA)

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1 Background Information

1.1 Introduction

A right of audience is a right for a lawyer to appear and conduct proceedings in a court on behalf of a client. Solicitors in Northern Ireland have traditionally had rights of audience in the Magistrates' Courts and County Courts, and also enjoy rights of audience in the Crown Court by virtue of section 50 of the Judicature (Northern Ireland) Act.

To date, save for certain specific exceptions contained in section 106 of the Judicature (Northern Ireland) Act 1978, solicitors in Northern Ireland have not been permitted to exercise rights of audience in the High Court or the Court of Appeal (the Higher Courts). This is in marked contrast to the situation in England and Wales, where the Courts and Legal Services Act 1990 allowed solicitors to exercise rights of audience in the Higher Courts by completing prescribed courses of training and assessment administered by the Law Society of England and Wales. Similarly, in Scotland, the Law Reform (Miscellaneous Provisions) (Scotland) Act 1990 extended rights of audience in the superior courts to suitably qualified solicitors. In the Republic of Ireland the Courts 1971 extended full rights of audience to solicitors in any court.

The Law Society of Northern Ireland (the Society), recognising the need for the provision of proper training for solicitors wishing to exercise advocacy rights, established an Advanced Advocacy Course in 2000. Each year since then, the Society's Advocacy Working Party in association with the National Institute of Trial Advocacy USA has organised training courses for solicitors in advanced advocacy leading to the awarding of a Certificate of Advanced Advocacy.

1.2 Justice Act (Northern Ireland) 2011

The origins of this Regulatory Impact Assessment (RIA) lie with the passage of the Justice Act (Northern Ireland) 2011 (the 2011 Act), and in particular, Part 8 of that Act which provides for the authorisation by the Society of solicitors who have completed certain training to have rights of audience in the Higher Courts.[1] In relation to authorised solicitors, the Act requires that the Society make Regulations relating to:

a) The education, training or experience to be undergone by solicitors seeking to be authorised in the Higher Courts.

b) The recognition as authorised solicitors of those solicitors who have already completed prescribed training before the commencement of the relevant provisions of the 2011 Act. This relates to those persons who have already been awarded a Certificate of Advanced Advocacy.

[1] The 2011 Act amends section 106 of the Judicature (Northern Ireland) Act 1978 to insert a new sub-section (3) which reads "A solicitor who holds an authorization under Article 9A of the Solicitors (Northern Ireland) Order 1976 shall have the same right of audience in any proceedings in the High Court or the Court of Appeal as counsel in those courts and any such right is in addition to any right of audience which a solicitor would have apart from this sub-section". The 2011 Act also inserts a new Article 9A into the Solicitors (Northern Ireland) Order 1976 which sets out how a solicitor may obtain an authorization confirming these additional rights of audience.

c) The duties imposed by the Act as regards the advice to be given by solicitors instructing an authorised solicitor.

In June 2013 the Law Society consulted on draft Regulations to facilitate the extension of rights of audience in the Higher Courts to authorised solicitors and a draft Code of Conduct covering all aspects of solicitor advocacy. It is important to note that it would have been open to the Society to include a route to qualification by means of proven lengthy experience however after consideration of the position in comparable jurisdictions it was decided that the only route to qualification should be by way of completion of the Society's Course for Solicitor Advocates.

1.3 Rights of Audience in the Higher Courts Regulations

The draft Solicitors' (Rights of Audience in the Higher Courts) Regulations make provision for a number of matters relating to the manner in which an application shall be made to the Society for an authorisation under Article 9A and the education, training or experience required to be obtained before the Society shall grant (or shall be taken to have granted) such authorisation. In terms of the requirements for obtaining authorisation Regulation 3.1 of the draft Regulations state that a solicitor applying to obtain authorisation under Article 9A of the 1976 Order must:

- Hold a current practising certificate from the Society

- Have three years post qualification experience prior to the date of his/her application

- Have completed the training course specified in Schedule 1 of the Regulations. Schedule 1 contains details of the training course that comprises two modules

    1. Evidence module
    2. Advocacy module

Applicants must successfully complete both modules, and the teaching of ethical issues is included in both modules. Compliance with professional ethics is a criterion against which assessments are carried out and the Schedule contains details of the course content, its length and how modules are examined.

Regulation 3.2 provides that a solicitor who has already been granted a Certificate in Advanced Advocacy by the Society on or before the commencement of the Regulations and has completed the course specified in Schedule 2 of the Regulations shall be taken to hold such authorisation. Schedule 2 contains details of a course of training in evidence and pleading in the Higher Courts.

Regulation 4 specifies that a solicitor seeking authorisation may rely on qualifications gained in another jurisdiction and that the Society will consider each application on its merits.

Regulation 5 provides that a solicitor wishing to become an authorised solicitor must complete an application form in the manner set out in Schedule 3 and provide any other information which the Society may reasonably require for the purpose of determining the application. At any time after receiving the application and before determining it, the Society may require the applicant to provide further information. There will be a fee payable of £100. A solicitor who is refused authorisation may within 28 days of receiving notification of the Society's decision ask for the decision to be reviewed. Regulation 6 requires that authorised solicitors undertake annually 3 hours of CPD in advocacy skills or the law of evidence.

Regulation 7 provides that the Society shall keep the general operation of the Regulations under review to ensure that they are consistent with the requirements of Article 9A of the 1976 Order. The Society commits to a formal review being conducted following the third anniversary of the Regulations coming into operation. When conducting the review, the Society shall have regard to any representations made by the Lord Chief Justice, the Department of Justice, the Attorney General and any others that it considers relevant. The result of the review will be published.

1.4 Instruction of an Authorised Solicitor

The matter of how a solicitor ought to instruct an authorised solicitor is dealt with in the draft Solicitors' Practice (Amendment) Regulations. The Justice Act 2011 inserts a new Article 40A into the 1976 Order which provides that a solicitor who is minded to brief an authorised solicitor in the Higher Courts must advise the client in writing of certain matters in relation to the proposed representation.

Article 40A imposes a strict duty on a solicitor to inform the client of the possible alternative means of representation available to him/her. The Article requires that the instructing solicitor must advise the client in writing:

a) of the advantages and disadvantages of representation by an authorised solicitor and by counsel, respectively;

b) that the decision as to whether an authorised solicitor or counsel is to represent the client is entirely that of the client

The Act provides that the Society shall make Regulations with respect to the giving of this advice.

The draft Solicitors' Practice (Amendment) Regulations provide for an additional Regulation to be inserted in the Solicitors' Practice Regulations 1987. The new Regulation 8D sets out the form of the written notice to be given to the client. It is the Society's view that in addition to the matters provided for by the statute, the notice to the client should provide that in relation to the matters covered at (a), the advice shall cover:

(i) The gravity and complexity of the case;

(ii) The nature and practice, including specialisation, and experience of the authorised solicitor and counsel respectively; and

(iii) The likely cost of instructing an authorised solicitor and counsel respectively.

1.5 Code of Conduct

In light of these new proposals, the Society came to the view that it was necessary to draw together existing regulation and new provisions in a comprehensive document to cover all aspects of solicitor advocacy and a new draft Code of Conduct was developed. The duty of a solicitor advocate to protect the interests of his/her client is at the core of the draft Code of Conduct and the draft Code sets out matters of professional ethics and compliance with relevant judicial decisions which any solicitor advocate might be expected to be aware of and adhere to and mirrors similar provisions in comparable jurisdictions.

The sensitive issue of guidance applicable in a criminal trial when a client confesses is dealt with in Appendix 1 of the Code and incorporates the Society's existing guidance to Solicitor Advocates in the Crown Court. The Code is sufficiently clear and concise so as to be capable of being understood easily by a lay client in the event of dispute or disagreement.

1.6 Consultation Process

The draft Regulations and Code of Conduct were issued for consultation in June 2013 and distributed to almost 40 organisations including to the Lord Chief Justice (LCJ) of Northern Ireland, the Director of Public Prosecutions, the Crown Solicitor and the Bar Council. In light of the range of concerns expressed during the consultation and debates on these matters during the passage of the 2011 Act through the Northern Ireland Assembly the Society decided, following discussions with the Better Regulation Unit at DETI, and the DOJ, that a full Regulatory Impact Assessment of the Society's authorisation scheme ought to be carried out.

A copy of the original Consultation Paper entitled "The instruction, qualification and conduct of authorised solicitors in the Higher Courts" together with a copy of the two sets of draft Regulations and the draft Code of Conduct can be accessed from https://www.lawsoc-ni.org/law-society-public-consultations.

2 Regulatory Impact Assessments

2.1 Introduction

A Regulatory Impact Assessment (RIA) is used for assessing the impact of policy options in terms of the costs, benefits and risks of a specific proposal. The current Northern Ireland RIA framework is located within the Northern Ireland Better Regulation Strategy, which covers all business sectors, including charitable, voluntary and social enterprise sectors. Current guidance from the Northern Ireland Executive states that an RIA should be considered for every policy and strategy as part of good policy making in line with the Policy Development Cycle.[2] Essentially, an RIA must be considered for any policy that has an impact (positive or negative) on the wider business community in Northern Ireland, and this applies to both legislative and non-legislative policies.

The key aim of an RIA is to ensure that businesses in Northern Ireland are not placed in a disadvantageous position with respect to competitors further afield as a result of regulatory arrangements imposed internally within the region. In this context, it is therefore necessary to ensure that the new regulatory arrangements proposed for extending the rights of audience for solicitor advocates to the Higher Courts in Northern Ireland takes full account of the particular impact that these arrangements might have on the legal profession within the region and the consequences that might flow from this for the Northern Ireland economy as a whole. The impact of the 'rights of audience' proposals on smaller and micro-businesses in Northern Ireland is particularly relevant in this case given the structure of the legal profession within the region. Barristers in private practice are sole practitioners and most solicitors' firms in Northern Ireland operate as 'micro businesses', unlike the situation in England and Wales for example where there is a much higher proportion of larger solicitor firms in existence and where barristers operate through the chambers system.

A key element of any Impact Assessment is the need to engage in dialogue with the range of constituents who may be affected by the relevant proposals in order to establish with some degree of accuracy the likely impact of a particular policy proposal. In Northern Ireland, the current RIA Guidance states that consultation/dialogue (both informally and formally) with key stakeholders (such as regulators, businesses, business representatives) at various stages throughout the process is appropriate and helpful. In particular, the Guidance states that informal discussions at an early stage, with those persons/organisations to be impacted upon by the policy proposal will help to shed light on other potential issues that need to be considered throughout the process.

Evidence and supporting analysis should, according to the Guidance be relevant, current, robust, justified and the RIA should clearly demonstrate the development of options to a preferred way forward, based on the evidence and analysis.

[2] https://www.economy-ni.gov.uk/articles/regulatory-impact-assessment-ria-guidance

One of the advantages of conducting an RIA on proposals that have already been subject to scrutiny by the Northern Ireland Assembly and prior public consultation is that there is an existing body of research and evidence from which to draw when assessing impacts. In this context there is the range of submissions that were provided to the Society during the consultation on the draft Regulations as well as the considerable body of analysis surrounding the provisions that took place during the passage of the 2011 Act through the Northern Ireland Assembly. This RIA also conducted primary research on the likely impact of the proposals through issuing a questionnaire to solicitors who had already completed the advanced advocacy course in Northern Ireland. In addition, during this consultation phase of the proposals the RIA will be issued to all key stakeholders for comment.

With respect to transparency, current Guidance also states that the RIA (in the development stage) should be published as part of the formal consultation process with the view to being adapted, as appropriate, depending on responses from consultees. In addition, Guidance recommends that the final approved RIA should then be published on the relevant website along with the related legislation link or policy statement or strategy as appropriate. This RIA will be complying fully with all these requirements, through the publication of a draft RIA for consultation, which will be available to all key stakeholders, and which, when finalised, will be publicly available on the Society's website.

3 Key Elements

3.1 Introduction

According to the current RIA Guidance, the overall RIA process is divided into a series of 'key elements' which are provided below. The first stage in the process is the 'screening' of the policy proposal in order to determine whether or not it is appropriate to carry out a full RIA. In light of the concerns that were raised during the passage of the 2011 Act through the Northern Ireland Assembly and the range of views expressed during the consultation on the draft Regulations and Code of Conduct, the Society is of the view that in the interests of best practice it is necessary to screen the proposals 'in' and that a full RIA will be carried out.

3.2 ELEMENT 0: Identification of the intervention, objective and requirement for RIA

The objective of the proposals in this case is the authorisation of solicitors to have rights of audience in the Higher Courts in Northern Ireland, thereby bringing this region into line with the situation that presently exists in the rest of the UK. This policy objective is linked to wider developments in recent years within the justice system throughout the UK aimed at ensuring enhanced choice for clients and the enhanced provision of legal services.

3.3 ELEMENT 1: Identification of viable options that will achieve the objectives

There were a number of options available with regard to the authorisation of solicitors to have rights of audience in the Higher Courts in Northern Ireland. These include:

Option 1
Qualification by length of experience with solicitor advocates required merely to inform the client that they may be represented either by a barrister or solicitor advocate, and no formal Code of Conduct.

Option 2
Completion of the proposed Law Society's Training Course for authorised solicitors together with a more complex set of arrangements for instructing authorised solicitors which make reference to the gravity and complexity of the case, the nature and practice, including specialisation and experience of the authorised solicitor and counsel respectively; and the likely cost of instructing an authorised solicitor and counsel respectively, and a Code of Conduct covering all aspects of solicitor advocacy. This is the Society's preferred option which goes beyond the requirements of the 2011 Act.

Consultation Question:

1 Do you agree that these two options represent the viable options that would achieve the objective? If not, what specifically do you consider to be an alternative viable option to those listed?

3.4 ELEMENT 2: Identify the Effects of the Proposals

This part of the RIA requires identification of the effects of the viable options listed in Element 1. The potential issues to be considered at this stage include the impact on competition within the marketplace, possible distortion of the marketplace or the impact on businesses operating in other markets as well as having due regard for the equivalent regulatory regime in neighbouring jurisdictions and in particular the rest of the UK.

In particular, RIA Guidance requires that regulators at this stage of an RIA should consider what impacts are 'least intrusive and most effectively managed' by the regulator. Clearly in this case, 'the least intrusive and most effectively managed' impacts would be one based on a route to qualification for solicitor advocates based on length of experience; with solicitor advocates required to inform the client that they may be represented either by a barrister or solicitor advocate, and no formal Code of Conduct. This does not imply however that this ought to be the one that ultimately prevails, but rather, that this option is given 'particular consideration'. Alternatively a more robust approach may be taken.

3.4.1. Competition Concerns and Potential Distortions within the Marketplace

A number of issues were suggested as possible matters of concern with respect to the proposals during the passage of the 2011 Act through the Northern Ireland Assembly and the course of the consultation on the draft Regulations. The Bar Council felt that the proposals would erode the workload and the expertise needed to build up and maintain an independent Bar and expressed concern about the level of training contained within the proposals. Referring to the Crown Court the Bar Council expressed concern that the proposals contained no mechanism for checking whether in relation to solicitors exercising rights of audience in that court, the conflict of interest between the solicitors' financial interest and the interests of the client was being resolved adequately. In fact, it was the view of the Bar Council that the proposals were likely to work in the solicitors' favour and to the detriment of clients. The Bar Council also pointed out that in England and Wales, concerns had been expressed that the increasing use of solicitors was threatening the long term future of the Junior Criminal Bar and possibly the quality of advocacy in the Crown Court.[3]

In response to these concerns a great deal of emphasis was placed during the Assembly phase of the proposals on the safeguards contained within the rights of audience clauses of the 2011 Act which were specifically designed to ensure that competition is properly maintained and that conflicts of interest are prevented. It was pointed out that these safeguards go well beyond that which exists in neighbouring jurisdictions particularly the requirement that a solicitor must outline to the client the range of advocacy representation options open to them. Significantly, an additional safeguard and element of reassurance was

[3] February 2010 report on The Procurement of Legal Services in England and Wales by the Legal Services Commission Public Accounts Committee.

also provided within the proposals with the requirement that the Society's Regulations were subject to the concurrence of the DOJ (in consultation with the Attorney General) and the concurrence of the Lord Chief Justice. It was pointed out that the additional safeguards contained within these Regulations need to be seen within the wider context in which there is a general duty on solicitors to act in the client's best interest and to comply with Practice Regulations. The Society already has a range of powers to discipline solicitors against whom they receive a complaint.

In terms of training quality, it is important to note that Dame Elish Angiolini, former Solicitor General and Lord Advocate of Scotland and current Principal of St Hugh's College, Oxford, conducted a Review of the Advanced Advocacy Course in 2012. The Report praised the quality, teaching methods and depth of the course, illustrating the high calibre of the qualification:

> *'The width and the level of expertise of the teaching faculty is formidable and the ability of the Course to attract such highly regarded teachers and practitioners is indicative of the esteem in which the Course Director and the University is held. Overall this is an outstanding programme and is an exemplar course in the field of international as well as domestic training in forensic advocacy.'*

In order to better inform the development of these proposals however, and in line with best practice, the Society undertook empirical qualitative and quantitative research consisting of a Survey and an analysis of the workload of those who have already been awarded a Certificate of Advanced Advocacy (CAA). The full Survey, completed with results, methodology, etc. is contained within Annex 1 to this RIA. There are a number of important findings from the Survey which shed useful light on the likely impact of the proposals and these are outlined below.

3.4.2 Composition of Existing Holders of the CAA

Data on the composition of the existing holders of the CAA shows that as of the end of 2015 a total of 476 persons had completed the course in solicitor advanced advocacy. Of those 476 persons, just over 50% had been qualified as solicitors for at least 10 years, and 80% had been qualified as solicitors for at least 6 years, indicating that those undertaking the advanced advocacy course were among the more experienced members of the profession. This conclusion is also borne out by an examination of the status of participants in the advanced advocacy course which indicates that of those who had taken the course and were working in private practice, over 70% (or 209 respondents) were working at partner level within their organisation. In other words, those qualifying as with the CAA are more experienced solicitors with a greater degree of seniority suggesting that lack of experience may not be a serious issue.

Just as significant however is the fact that of those who have completed the course to date, only 61%, or 290 persons, were actually working in private practice. In addition to those who had left the profession all together, it is worth noting that a significant proportion, over 20%, (or 104 respondents), were actually employed in government or public service. The different impacts on

those employed in the public sector as opposed to those working in private practice is discussed further below.

3.4.3 Main Areas of Work for Existing Holders of the CAA

Looking at the data on the main area of work in which respondents exercised advocacy rights a slightly higher proportion of those surveyed indicated that they exercised rights in criminal (55%) as opposed to non-criminal cases (45%). Those completing the Survey were asked to indicate the type of courts/tribunals in which they had exercised advocacy rights in the previous two years and the following data emerged. Of those respondents to the Survey who had exercised rights of audience in non-criminal cases, over 50% had undertaken work in the area of Family Law, almost 50% had worked in the area of Personal Injury, while between 10% and 20% had worked in Commercial cases, as well as matters relating to Bankruptcy/Insolvency, Employment, Asylum and Immigration, Mental Health, and Licensing. Less than 10% had worked in the areas of Welfare Rights and Planning.

3.4.4 Advocacy Rights and Criminal Law

Of those respondents who had exercised advocacy rights in the previous two years in the criminal courts, 82.9% (or 145 respondents) had carried out non-contested hearings in the Magistrates Court; while 68% (or 119 respondents) had carried out Contested Hearings in the Magistrates Court. Just over 50% of respondents (91 in total) had exercised rights of audience in appeals to the County Court, while just under 50% of respondents (87 in total) had exercised rights of audience in non-trial work in the Crown Court. Under 10% of those surveyed (or 17 respondents) had participated in a Crown Court trial in the previous two years while almost 17% of those surveyed (or 29 respondents) had exercised rights of audience in Parole Commissioner Hearings.

There are a number of points to note here given that the potential impact of the proposals on the criminal bar in Northern Ireland featured prominently in discussions during the passage of the 2011 Act through the Assembly and on consultation on the draft Regulations. The first point to note is that solicitors in Northern Ireland have statutory rights of audience in the Magistrates' Courts and County Courts, and therefore participation in these areas of work is not necessarily related to qualification as a solicitor-advocate per se, although one might assume that those seeking to exercise rights of audience in these courts would complete the advanced advocacy course. Equally however, it would clearly be a mistake to attribute the work of holders of the CAA in this area as being a direct result of the introduction of the advanced advocacy course given that this is an area of practice in which any solicitor in the past would previously have been entitled to undertake.

During the course of the consultation on the draft Regulations the Bar Council did not agree with the assertion in the Consultation Document that solicitors had developed 'considerable expertise' in advocacy in the courts over the years, arguing that solicitors who choose to undertake advocacy were limited in number and generally appeared in criminal cases in the Magistrates' Courts, although there was an acknowledgement that since 2005 a number of solicitor

advocates now appear in the Crown Court. In addition, the Bar Council claimed that for financial reasons, it had become increasingly frequent for people to be represented in the Crown Court by solicitor advocates and that these advocates were 'frequently inexperienced'.

At the Committee Stage of the 2011 Act, it was pointed out by a Departmental official that according to available data based on legal aid payments, only a small percentage of payments had been made to solicitor advocates for work done in the Crown Court, suggesting that the effect on the Bar of the extension of rights of audience to the High Court and the Court of Appeal would not be unduly significant. It was also pointed out that while there had been a 'small uptake' in solicitor advocacy in the Crown Court, in the County Court, where there has been a financial inducement for solicitors to brief themselves for over 10 years, uptake has been even less, and that overall, barristers still frequently appear in the lower courts. Details of the length of experience of those who hold a CAA can be found in Annex 1.

As the data from the Survey shows, the overwhelming proportion of work undertaken by those holders of the CAA in the previous two years had been in the Magistrates Court, with a much higher proportion relating to non-contested hearings. These figures support the data on legal aid payments which show a very small percentage of work done in the Crown Court, supporting the original conclusion that the effect on members of the Bar of the extension of rights of audience to the High Court and the Court of Appeal would not be unduly significant.

3.4.5 Advocacy Rights and Family Law

Of those respondents who had exercised advocacy rights in the last two years in family courts, just over 80% (or 99 respondents) had exercised those rights in non-contested hearings in the Domestic/Family Proceedings Court. Just over 70% (or 89 respondents) had exercised rights in Contested Hearings in the Domestic/Family Proceedings Court; just over 40% (or 53 respondents) had exercised rights in County Court/Family Care Centre Appeals (from the DPC/FPC); 63% (or 77 respondents) had exercised rights in non-contested Family Care Centre cases, and almost 25% (or 30 respondents) had exercised rights in contested Family Care Centre cases.

With respect to the County Court, over 50% (or 67 respondents) had exercised rights of audience in non-contested adoption and divorce cases; with almost 30% (or 36 respondents) having exercised rights of audience in 'other' County Court cases. With respect to the High Court, over 26% of respondents had exercised rights of audience in the past two years in uncontested/undefended adoption and divorce cases, while 29.5% of respondents had exercised rights of audience in 'other' cases in the High Court.

3.4.6 Advocacy Rights and Civil Law

Looking at those respondents who had exercised advocacy rights in the previous two years in civil (non-family) courts, almost 68% (or 109 respondents) had exercised those rights in County Court interlocutory hearings. Just over

50% (or 85 respondents) had exercised rights in County Court Settlements/Approvals; just under 15% (or 24 respondents) had exercised rights in County Court Contested Hearings; just over 50% (or 87 respondents) had exercised rights in High Court interlocutory hearings; just under 50% (or 80 respondents) had exercised rights in High Court Motion Court cases; approximately one third (or 54 respondents) had exercised rights in 'other' High Court cases

3.4.7 Advocacy Rights and Tribunals

In terms of those who had exercised rights of audience in Tribunals in the previous two years, almost 50% (or 51 respondents) had exercised those rights in Mental Health Review cases, with approximately one quarter of respondents having exercised rights in Employment and Social Security Tribunals (30 and 28 respondents respectively); while just over 14% (or 15 respondents) exercised rights in disciplinary/regulatory hearings; with under 10% of respondents (10 and 8 respectively) having exercised rights of audience in the Lands Tribunals and in Planning Appeals. Again, the key point to note here is that solicitors have always had rights of audience in Tribunals and while this is clearly an important area of work for some members of the profession, it would be a mistake to attribute advocacy before Employment Tribunals for example as directly related to completion of the advanced advocacy course per se.

3.4.8 Rights of Audience in the Higher Courts

When asked 'Would you intend to exercise rights of audience in the High Court and/or Court of Appeal?', just over 70% (or 193 of those surveyed) answered in the affirmative. Of those who indicated that they would wish to exercise rights of audience in the High Court and/or Court of Appeal, just over 75% (or 147 respondents) indicated that they would wish to exercise those rights in civil cases, and just over 40% (or 81 respondents) indicated that they would wish to exercise those rights in criminal cases. This is a significant finding and the reasons for this are considered below.

Of those who expressed an interest in exercising rights of audience in the Higher Courts, almost 84% (or 163 respondents) indicated that they wished to do so in order to improve the quality of existing skills, and almost 80% (or 155 respondents) indicated that they wished to improve the quality of existing services. Almost 80% (or 154 responses) indicated a desire to enhance personal development, while almost 70% (or 135 respondents) indicated a desire to enhance practice development. Some 65% (or 127 respondents) stated that they wished to improve client choice and only 54% (or 106 respondents) indicated a desire to improve opportunities for new practice areas of work. This suggests that it shows that for a large proportion of holders of the CAA, rights of audience in the Higher Courts is more about better serving an existing client base and area of work rather than seeking to branch out into new areas. The impact of the proposals on the Bar will be considerably less if solicitor advocates are gaining enhanced expertise within existing areas of work as opposed to moving into areas where work is currently undertaken by barristers.

There were a number of other reasons cited among respondents to the Survey, including flexibility, expertise, and costs. For example, one respondent stated that

> *'occasionally Counsel will not be able to attend an application due to other commitments and the solicitor with carriage of the file should have the option of attending to deal with the matter'.*

This would indicate a practical value attached to the proposals related to expediency and efficiency in the administration of justice, with authorised solicitors wishing to be able to 'step in' and attend to an application should counsel be unavailable rather than seeking to practise in the Higher Courts themselves per se, highlighting the fact that in some cases, these proposals will not result in a transfer of work from the Bar to authorised solicitors, but rather, will ensure a more efficient administration of justice**.**

3.4.9 Rights of Audience in the Higher Courts – Potential Barriers

For those who currently held a CAA but would not intend to exercise rights of audience in the High Court or Court of Appeal, the Survey revealed that just over a third (or 26 respondents) stated that such a development would not fit with their personal development profile. Just over 72% (or 55 respondents) stated that exercising rights of audience in the High Court or Court of Appeal did not suit their existing practice model, while the time and training commitment required to carry out the work was cited by just over one third (or 28 respondents) as a reason why they would not be seeking to exercise rights in the Higher Courts. The cost to the practice was cited by just over 15% (or 12 respondents) as a reason why they would not wish to exercise these rights.

Additional qualitative data was obtained on this matter through a number of open-ended questions with respondents asked what they considered to be the key challenges facing solicitors exercising higher rights of audience. This additional data provided some material for identifying existing marketplace distortions and impacts on businesses. For this part of the Survey, 182 responses were received, which identified 322 challenges. The key themes to emerge from this study were as follows. Time management was identified as a critical challenge facing solicitors exercising higher rights of audience in 71 of the 182 (39%) responses received. This included the time that would be required to not only gain expertise and excellence at advocacy, but also the time that would be required to adequately prepare a case, i.e. legal research and file preparation as well as the time involved in attending court for the exercise of these rights. In particular, concern was expressed that office and client management could be adversely affected with the increased time required to build and practise advocacy skills:

> *'It would neither be client friendly or economical for me to exercise these rights, certainly not in hearings or trials as it would result in me failing in my duties to other clients'.*

The Law Society's Library provides resources and services for solicitor advocates. It is a professionally staffed library providing access to local, national and international legal information electronically and in hard copy. It

also offers an authority collating service with next day turnaround.

Travel time was mentioned as an issue within this theme, notably for those who travelled from outside Belfast. Respondents drew attention to the fact that work in the Higher Courts is Belfast based, which is a limitation to solicitors living and working at any distance outside this. During the passage of the 2011 Act through the Northern Ireland Assembly and the course of the consultation on the draft Regulations, a number of contributors felt that the proposals had the potential to undermine small solicitor practices outside Belfast by virtue of the fact that the larger firms in the city might establish their own advocacy services. Interestingly, concerns about larger firms establishing in-house advocacy services did not arise during this Survey, although the issue of travel time and distance from Belfast was a factor cited by a number of respondents, for example:

> *'I live and work in Portadown and travel to Belfast adds to the time commitment. I do not have the time or quiet in a busy office to look up case law. The work does not pay sufficiently to justify me taking a main role in the High Court and being out of the Office for research of case law'.*

Clearly therefore, it is important to note that for a significant proportion of those who hold the CAA, there is no desire to exercise rights of audience in the Higher Courts, due to a range of reasons that might be summarized as 'personal choice'. This includes a recognition that for some respondents, there is a reluctance to add to an existing busy workload and detract from existing business priorities. This may minimize the impact on the Bar from solicitors whose practices are some distance from Belfast.

3.4.10 Rights of Audience in the Higher Courts and the Public Sector

In some cases, perhaps unsurprisingly for those employed in the public sector, respondents indicated that they did not wish to pursue rights of audience in the Higher Courts by virtue of their current job description, e.g.

> *'I work in the public sector and my role does not lend itself to needing a Higher Right of Audience at this stage however other posts that I may well hold in the same organisation may require more appearance in the Higher courts and in that instance I would seek further training to allow same in due course.'*

This again illustrates the way in which the existing qualification has developed within some areas of the public sector. Much of the focus on the 2011 Act and the draft Regulations related to the impact of the proposals in the private sector. It is important to note however, that a significant proportion of those who hold the CAA, over 20% in fact, are employed in the public sector/government service and for whom exercise of advocacy rights is part of their existing, or future, job description. In fact one respondent pointed out in the survey that advocacy in Higher Courts is already a requirement for certain solicitors e.g. Official Solicitor's Office in carrying out their work.

3.4.11 Rights of Audience in the Higher Courts: Training and Experience

During the course of the passage of the 2011 Act through the Northern Ireland Assembly and the consultation on the draft Regulations a significant amount of focus was directed towards the training aspect of the proposals and in particular the extent to which those wishing to exercise rights of audience in the Higher Courts would have the necessary expertise to perform that function.

In particular, the Bar Council expressed concerns that when compared with the training and education undertaken by members of the independent Bar, the training outlined in the Regulations did not appear adequate in terms of length, breadth and practical experience. The Bar Council argued that the transfer to the Bar of solicitors wishing to undertake advocacy in recent years was demonstrative of the fact that they recognised the advanced and superior training that was provided by the Bar, and in fact suggested that this transfer might also be recognition that the role of properly providing a very high level of representation could not be done to the highest standards as an authorised solicitor, which meant trying to run a practice and at the same time, appear in court. In response to these concerns the Society pointed out that the training requirements for authorised solicitors would require them to undertake annually 3 hours of CPD in advocacy skills or the law of evidence and that in fact under Option 1 set out on page 7 the Society could have made rights of audience in the Higher Courts contingent on length of experience only, i.e. without additional training.

When asked about this issue during the course of the research for this RIA several respondents noted that solicitors do not have the same training in the rules of evidence and do not research case law in the same way as barristers, thereby creating a practical challenge to the exercise of rights of audience in the Higher Courts. In fact, respondents identified training as a challenge in 14 out of the 53 responses received with challenges identified relating to either the lack of training available or the time commitment required in order to undertake adequate levels of training. There was a concern regarding the need to ensure solicitors have the same training opportunities in relation to the rules of evidence as barristers. Furthermore, in addition to the proposed course on advocacy, it was recommended that some training in relation to the drafting and use of affidavits, statements of case and skeleton arguments be available. The commitment required for training was a key issue, considering other responsibilities solicitors undertake on a daily basis.

Significantly however, there were also some very different views expressed by other respondents on this issue. When asked why they would wish to exercise rights in the Higher Courts, one person responded that it was:

> *'difficult to find counsel that knows more than I do about this area of work. Extremely frustrating to have them delivering advocacy in higher courts when I know more about it myself'.*

Another respondent working in the public sector noted that it was nonsensical that in situations where solicitors working in public service have gained expertise in areas of law which many counsel are not exposed to, they are

obliged to instruct junior counsel to take carriage of cases. This supports the arguments made earlier in respect of the efficient administration of justice by removing unnecessary barriers to the prompt and successful completion of work undertaken.

Several respondents linked the issue of their own expertise with expediency in carrying out the work and the time needed to brief counsel. For example,

> *'It's easier on occasion to do it yourself with equal skill than to go through the pain of preparing a brief for Counsel, especially if the matter is urgent or imminent'.*

> *'In dealing with emergency JR applications, it can be necessary to cover these matters at short notice and there may be no time to engage Counsel. Therefore, it is necessary that the option of conducting cases as a solicitor advocate in higher courts is available'.*

Depending on the area of work, i.e., criminal versus civil, there would appear to be quite strongly divergent views regarding the expertise and training needed for those wishing to exercise rights in the Higher Courts. This divergence is also apparent with respect to other responses received regarding future challenges for those wishing to appear in the Higher Courts. For example, a lack of experience was identified as a challenge to solicitors exercising rights of audience in 23 responses (12.7%). The prominent issue here was the inability to gain experience in advocacy, notably in the Higher Courts, in order to increase competence. Furthermore, respondents noted the disparity of experience between solicitors and counsel, creating a significant challenge for solicitors.

> *'In criminal work there is a problem with publicly funded Magistrates court work in NI allowing certification for counsel but not uplift for solicitors. This limits the opportunity for defence solicitors to build experience in the Magistrates' Court contests which would develop advocates for progression to the Higher Courts'.*

Respondents noted that lack of confidence is a key barrier to successfully exercising advocacy rights and recognise that this confidence comes through experience. The lack of experience is therefore seen by some respondents as a critical preclusion to solicitors exercising rights of audience.

3.4.12 Potential Barriers for Exercising Rights of Audience in the Higher Courts

Other respondents felt that current Bar Council Rules and practices are deliberately restrictive and designed to preclude solicitors from gaining experience in more serious cases. Without the gaining of valuable experience, it was argued that solicitors will be unable to advance in this field thereby precluding the exercise of rights of audience. Relating to this, several

respondents raised concern that there is a lack of opportunity for solicitors to perform advocacy as frequently as their colleagues practising at the Bar, linked in part to a somewhat hostile attitude from members of the Bar. One respondent for example expressed concern that members of the Bar do not extend the normal cooperation in managing cases.

> *'My experience to date is that there can be some resistance from counsel acting for the other party in the 'openness' of exchange of information and discussion of issues'.*

Quite a few of those who participated in the Survey expressed concerns about the level of resistance and opposition that was likely to be faced from the Bar (expressed in 31 out of the 57 responses received relating to the Bar). Respondents viewed the Bar as highly protective of their role as advocates and anticipated that solicitors wishing to exercise rights of audience would be treated with a level of hostility. To overcome this, it was stated that a complete 'culture change' would be necessary.

Several respondents also expressed concerns about the attitude towards solicitors exercising advocacy rights from members of the judiciary. One respondent noted that when exercising advocacy in County Court hearings, some of the judiciary do not appear to be receptive to solicitors appearing without counsel and this can have a negative impact on the case. A number of respondents reiterated the importance of 'a change in mind set' within both the judiciary and the Bar to enable solicitors to practise these rights. One contributor stated that 'there exists a perception that counsel is more equipped to do a job' and it was argued that this perception was reinforced by 'some of the judiciary speaking to counsel in private and leaving solicitors outside discussions'.

On the issue of court attire, some respondents felt that reserving the use of wigs and gowns exclusively for members of the independent Bar created a perception in front of juries and other members of the public that there is a difference in skill or qualification to carry out the functions of the job. As one respondent put it,

> *'If our attire doesn't mirror those of our opponent we look like second class representation'.*

Consultation Questions:

2 Do you consider that the education and training requirements provided in the Regulations adequately addresses the concerns raised in relation to training for authorised solicitors? If not, how specifically do you think these problems can be addressed?

3 Are there additional impacts associated with the proposals that have not been identified in this RIA? If so, do you have any specific recommendations with regard to mitigating action that might be taken to eliminate or reduce these impacts?

4 Are there specific matters related to training and experience of

authorised solicitors that are missing from this RIA?

5 Do you have specific recommendations regarding the way in which the barriers that have been identified in this RIA might be addressed?

3.5 ELEMENT 3: Cost and Benefit Analysis

RIA Guidance states that cost and benefit considerations are a key aspect to be considered when determining the impact of any new regulatory proposal. In order to assist with the assessment of the costs of additional regulation, the current RIA Guidance separates costs into a number of different categories ranging from the costs to be borne by those affected by the regulation/policy through to the implementation costs for those assigned to implement and secure compliance and these are considered below. Guidance states that consideration should be given to transitional costs (initial outlay by the business impacted, in complying with the policy requirement), recurring costs (such as annual costs associated with demonstrating continued compliance, such as renewing a certificate, preparing for an inspection) as well as other direct and indirect costs.

Current RIA Guidance states that where new regulation is being considered it would be advantageous to undertake a baseline measurement exercise as this will facilitate future regulatory review. The Society will therefore use the data gathered to date, and the additional data that emerges during consultation on this RIA in order to estimate the total cost of the new proposals and this figure will then be used as a baseline in order to facilitate the formal review of the new provisions.

3.5.1 Implementation Costs for the Society

Guidance also states that while the main focus of regulatory activity tends to be on the regulatory need identified in policy, a key part of the implementation of regulation is the associated cost for the regulatory body required to implement, provide advice and guidance to business, and secure compliance. RIA Guidance states that costs associated with this aspect of regulation must be considered by the policy maker when developing an RIA to ensure that the approver is fully aware of the complete cost implications – not only for the business but also for the public purse in implementing the regulation and the contribution the regulatory activity will make to economic growth and fairness in the marketplace.

In addition, RIA Guidance states that the policy team should liaise with the relevant regulator to discuss and consider implementation costs, as part of the process of considering the right implementation options as part of the RIA process. The assessment should cover resource capacity as well as financial requirements for implementation by the regulating body.

In this case the regulatory body is the Society, who is also the body undertaking the RIA. In this case it is important to note that the Society is of the view that there is a not insignificant burden in terms of implementation on it, providing of

advice and guidance to business, and securing compliance with these proposals.

However this cost is deemed justified in light of the need to ensure adequate training of those wishing to exercise rights of audience in the Higher Courts and the appropriate regulation thereof by the Society. There is also a cost to solicitors who wish to become authorised as indicated in para 3.5 (iii) below.

3.5.2 Implementation Costs for authorised solicitors

RIA Guidance requires that an assessment of the relevant costs and benefits is required for each option at this stage. Where possible, Guidance states that costs and benefits should be valued in monetary terms. However, the Guidance recognises that in many assessments there are non-monetary impacts that cannot be valued cost effectively and that these non-monetary costs and benefits must be taken into account and should not be regarded as any less important than the monetary values.

Perhaps unsurprisingly, the costs of the proposals arose during the course of the consultation on the draft Regulations when it was pointed out that the total cost of the qualification would be £1500 to undertake the training course plus an additional application fee of £100, which one respondent considered to be 'a large sum of money', particularly when considered alongside costs associated with 13 hours of CPD in advocacy skills or the law of evidence) as well as the opportunity cost incurred of completing the course vis a vis income lost from carrying out other work.[4]

3.5.3 Cost benefit analysis

The issue of costs also arose during the Survey carried out for this RIA as one of the reasons that holders of the CAA would wish to practise in the Higher Courts. One respondent stated for example that the use of solicitor-advocates is

> *'primarily the client's choice driven by prohibitive costs…… The client's desire to manage and restrict costs demands that we are able to act as advocates on niche specialist areas on restricted matters that can be resolved at a very early stage'.*

Another respondent stated that:

> *'Costs may necessitate that I cannot afford to brief counsel. Cost benefit analysis of each judicial review will need to be considered'.*

Significantly, the issue of fees was also cited as a reason why some solicitor-advocates would **not** wish to exercise rights of audience. For example, one respondent stated that

[4] Those seeking authorisation under Schedule 2 of the Higher Courts Regulations will have to undertake a course of training in evidence and pleading in the Higher Courts.

'The lack of enhanced fees for appearing without Counsel is on occasions a disincentive to conducting cases in the FCC myself'.

In fact, the issue of costs was specifically identified as one of the main barriers to solicitors exercising rights of audience by almost 13% (or 23 respondents) and encapsulated two main themes, i.e. the lack of financial incentive for solicitor-advocates, and the additional costs incurred for solicitors wishing to exercise rights of audience.

In particular, one of the main barriers identified in the Survey is that there is not a significant financial incentive in the form of sufficiently enhanced professional fees to be attractive to develop the skills set. Responses noted the lack of a fee structure for solicitor advocacy at the Family Care Centre and in High Court civil cases. Order 55 Rule 2A of the County Court Rules (NI) 1981 provides for an uplift in County Court cases but this is at the discretion of the judge at the end of the trial. There is no system in place for payment of advocacy preparation fees should a case settle before hearing. Respondents stated that this makes the solicitor less inclined to accept this greater work load as there is no guarantee of payment. In addition, respondents noted that there is no uplift for solicitors who choose not to instruct counsel and no recognition whatsoever of the saving to the fund in not instructing counsel.

'If there was a financial incentive or uplift, I predict that more and more solicitors would appear themselves at County Court and High Court level'.

3.5.4 Cost/Benefit Analysis Summary

As outlined in the introduction, it would have been open to the Society to authorise solicitor-advocates on the basis of length of service, which would have been less costly for those wishing to exercise rights of audience, and less costly to administer. However, the Society is of the view that the costs incurred with the proposals as outlined are justified. Clearly in this case the primary monetary impact will be the cost of securing the authorisation, and the primary benefit from the proposals will be ensuring that the quality of advocacy for an authorised solicitor appearing in the Higher Courts will be adequate. This will in turn offer wider benefits to the community in terms of enhanced choice for clients and the enhanced provision of legal services.

Undoubtedly however, there are a range of issues that have been raised with respect to the payment structure for solicitor advocates as well as concerns expressed during the consultation on the proposals about the potential impact on the Bar. There are also clearly a range of non-monetary impacts to be considered including those working in the public sector who wish, or indeed, who are required to quality as solicitor advocates as part of their job description. In addition, it is clear that there are a number of solicitor advocates who do not wish to exercise rights of audience due to the difficulties that would arise with respect to travel time to do the work, and the consequent impact this would have on their existing business. Taking all these factors into account, the Society is of the view that the overall costs to be incurred by the proposals are justified.

Consultation Question:

6 Are there additional costs associated with the proposals that have not been identified? If so, please outline these costs and any remedial action that might be carried out to mitigate the impact of these costs.

3.6 ELEMENT 4: Risk assessment

RIA Guidance states that if any perceived risks are identified as the options are developed and assessed then consideration should be given to the nature and extent of these risks, for example as to whether they are legal or administrative, and how they will affect the benefits.

Clearly in this case one potential risk of the proposals is that authorised solicitors in the higher courts may not be adequately prepared for the new work that they may be required to undertake. In this context it is important to note that a number of concerns were expressed about the inadequacy of the training from the Bar Council. At the same time, it is important to note that, as one contributor pointed out,

> *'in a context in which a solicitor advocate was foolish enough to try and conduct a case in any court, let alone the higher courts, and was not competent to do so, the Society already had powers to discipline that person should they receive a complaint'.*

This contributor was of the view that additional training was not needed for those seeking rights of audience in the Higher Courts. However notwithstanding these comments, the Society is of the view that the additional training is justified. It is important to note also that the large majority of those who have trained as solicitor-advocates within private practice are working at partner level in their organisation and as such are experienced members of the legal profession thereby minimising the risk that representation in the Higher Courts might be carried out by someone unqualified for the role.

Consultation Question:

7 Do you consider that there are additional risks associated with the proposals that have not been identified? If so, do you have any specific recommendations with regard to mitigating action that might be taken to reduce/eliminate these risks?

3.7 ELEMENT 5: Economic assessment of best option

This element is designed to pull together all the inputs to the process to date, assess them in the policy context and the wider economic context, out of which should emerge the "best-fit" option for progressing to meet the policy objectives. It can include the rationale for eliminating other options considered.

In this case, it is important to note that the Society is of the view that the proposals as outlined in the consultation document represent additional costs for those wishing to secure authorisation to appear in the Higher Courts. These proposals were developed however in order to address a number of concerns put forward by other stakeholders and in order to achieve a model of best practice.

RIA Guidance requires that in addition to that evidence which has already been considered in the draft RIA, policy makers should be open to considering additional evidence provided by stakeholders that may have a bearing on the policy development process. In this context, the Society welcomes any additional evidence which contributors to the consultation on this draft RIA may wish to provide.

Consultation Question:

8 Do you have additional evidence that has not been considered in the RIA regarding the impact of the proposals?

3.8 ELEMENT 6: Proposed implementation and enforcement and sanctions for preferred option

RIA Guidance states that policy makers must set out what the ramifications of non-compliance and securing enforcement will be and that consideration should be given as to what level of compliance would be reasonable to be expected or achieved within the sector affected and what might be appropriate powers for regulators to have, in order to impose sanctions on those non-compliant businesses.

Guidance also states that it is important that informal consultation should take place with the relevant regulators on this issue to ensure that the right level of sanction is determined in the legislation to support them in their work and that the regulator to be tasked with implementing the regulation should be stated.

In this case it is important to note that the duty of a solicitor advocate to protect the interests of his/her clients is at the core of the draft Code of Conduct. The Society will however also ensure that there is adequate monitoring of authorised solicitors in order to ensure that there is full compliance with all aspects of this regulatory framework, including an approved Code of Conduct, and that all other aspects of the framework are adhered to, i.e. that courses are fully completed and all the relevant paperwork verified etc.

Consultation Question:

9 Are there specific issues related to the implementation, enforcement and sanctions for the preferred option that you consider are relevant and which have not been considered in this RIA?

3.9 ELEMENT 7: Monitoring, evaluation and review plan

Monitoring, evaluation and review are essential elements within any impact assessment process. Current RIA Guidance states that it is key from the outset of a new policy that consideration is given to monitoring, evaluation and review and that these future plans are included in an RIA. Future monitoring and evaluation must rely on evidence gathered during the implementation period and the period from then until a review commences. Guidance states that consideration should therefore be given as to what information/evidence will potentially be relevant; which organisation will gather and store it, along with how it will be gathered and stored to support monitoring and evaluation of the policy and resulting regulatory intervention. Guidance also states that informal consultation with key stakeholders is integral to developing a monitoring, evaluation and review plan.

Regulation 7 of the draft Solicitors' (Rights of Audience in the Higher Courts) Regulations provides that the Society shall keep the general operation of the Regulations under review to ensure that they are consistent with the requirements of Article 9A of the 1976 Order. The Society has committed to a formal review being conducted following the third anniversary of the Regulations coming into operation and has also committed to ensuring that when conducting the review, the Society shall have regard to any representations made by the Lord Chief Justice, the Department of Justice, the Attorney General and any others that it considers relevant and that the result of the review will be published.

Consultation Question:

10 Do you consider that these monitoring and review measures are adequate? If not, have you specific recommendations regarding the monitoring and review aspect of the proposals that you would wish considered?

3.10 ELEMENT 8: Approval and publication

The views expressed during this consultation exercise will be given full consideration by the Society and incorporated into the draft RIA. When the Regulations have cleared all procedural requirements and formally been approved the final RIA shall be deemed FINAL and published on the Society's website in compliance with the requirements of the current Guidance. A hard copy of the final RIA document will be provided on request.

3.11 Summary of Consultation Questions

1 Do you agree that these two options represent the viable options that will achieve the objective? If no, what specifically do you consider to be an alternative viable option to those listed?

2 Do you consider that the education and training requirements provided in the Regulations adequately address the concerns raised in relation to training for authorised solicitors? If not, how specifically do you think these problems can be addressed?

3 Are there additional impacts associated with the proposals that have not been identified in this RIA? If so, do you have any specific recommendations with regard to mitigating action that might be taken to eliminate or reduce these impacts?

4 Are there specific matters related to training and experience of authorised solicitors in the Higher Courts that are missing from this RIA?

5 Do you have specific recommendations regarding the way in which the barriers that have been identified in this RIA might be addressed?

6 Are there additional costs associated with the proposals that have not been identified? If so, please outline these costs and any remedial action that might be carried out to mitigate the impact of these costs.

7 Do you consider that there are additional risks associated with the proposals that have not been identified? If so, do you have any specific recommendations with regard to mitigating action that might be taken to reduce/eliminate these risks?

8 Do you have additional evidence that has not been considered in the RIA regarding the impact of the proposals?

9 Are there specific issues related to the implementation, enforcement and sanctions for the preferred option that you consider are relevant and which have not been considered in this RIA?

10 Do you consider that these monitoring and review measures are adequate? If not, have you specific recommendations regarding the monitoring and review aspect of the proposals that you would wish considered?

3.12 Equality Impact Assessment

In line with the guidance of the Equality Commission of Northern Ireland, the Society has screened out the draft Regulations, which are technical in nature and which will have no bearing in terms of equality of opportunity and/or good relations within the categories identified within Section 75 of the Northern Ireland Act 1998. The qualification is open to all solicitors to pursue and no specific barriers to protected categories are created by the Regulations. Furthermore, the Society notes that we did not receive any representations from interested stakeholders during the initial consultation process that the Regulations should be subject to a full EQIA.

3.13 Rural Impact Assessment

In line with the guidance of the Department for Agriculture, Environment and Rural Affairs, the Society has screened out this policy in terms of rural proofing. The network of solicitors operates in rural areas across Northern Ireland and access to the qualification will be applicable to all firms. On that basis we did not identify any direct or indirect impacts which would accrue to rural communities, but note that the benefits which would flow from these proposals would be equally applicable to rural areas due to the embeddedness of firms in rural communities.

ANNEX 1

Analysis of Higher Rights of Audience Survey 2016

- Up to year-end 2015, 476 persons have been awarded a Certificate of Advanced Advocacy (CAA).

- 79% of CAA holders have more than 6 years experience as a qualified solicitor, with 50% having more than 11 years experience.

- 61% of holders are male, 39% are female.

- Surveys were sent to 406 CAA holders. 70 persons were ineligible as:

    - 52 were no longer practising as a solicitor
    - 12 were members of the Bar of Northern Ireland
    - 6 were practising outside the jurisdiction of Northern Ireland

Responses:

- 278 responses were received. This comprises 68% of the total number of CAA holders surveyed.

- Respondents were categorised by profession type, namely; private practice, public sector or other legal employment. Of the respondents:

    - 195 were in **private practice** – 71%
    - 76 were in the **public sector**- 27%
    - 7 were categorised as **other legal employment** – 2%

- This composition of respondents mirrors the breakdown of profession type in the overall body of CAA holders surveyed.

Areas where advocacy was exercised:

- The main area where respondents exercised their advocacy rights was in criminal law, 153 persons (55%). The non-criminal area totalled 125 persons (45%).

- Of the respondents who exercised rights in the non-criminal / civil area, the majority, 107 persons (54%) worked in family law. This was closely followed by personal injury law, 97 persons (49%). The next most popular area of civil work was commercial, 40 persons (20%).

Courts where advocacy was exercised:

Criminal

- In relation to the criminal courts, of those respondents exercising advocacy rights in the last 2 years:
  - 145 persons (83%) had done so in the **Magistrates' Court** (excluding Contested Hearings)
  - 119 persons (68%) had done so in the **Magistrates' Court Contested Hearings**
  - 91 persons (52%) had done so in the **County Court Appeals**
  - 87 persons (50%) had done so in the **Crown Court (excluding Trials)**
  - 17 persons (10%) had done so in **Crown Court Trials**
  - 29 persons (17%) had done so in **Parole Commissioner Hearings**

Civil (Family)

- Of respondents exercising advocacy rights in the family courts in the last 2 years:
  - 99 persons (81%) had done so in the **Family Proceedings Court (excluding Contested Hearings)**
  - 89 persons (73%) had done so in the **Family Proceedings Court (Contested Hearings)**
  - 77 persons (63%) had done so in the **Family Care Centre (excluding Contests)**
  - 30 persons (25%) had done so in the **Family Care Centre (Contests)**
  - 67 persons (55%) had done so in the **County Court (Uncontested Adoption / Undefended Divorces)**

Civil (non-family)

- Of respondents exercising advocacy rights in the civil courts (non-family) in the last 2 years:
  - 109 persons (68%) had done so in the **County Court (Interlocutory)**
  - 85 persons (53%) had done so in the **County Court (Settlements/Approvals)**
  - 87 persons (54%) had done so in the **High Court Interlocutory**
  - 80 persons (50%) had done so in the **High Court Motion Court**
  - 30 persons (19%) had done so in **Inquests**

Tribunals

- Of respondents exercising advocacy rights in Tribunals the last 2 years:
  - 51 persons (49%) had done so in the **Mental Health Review Tribunal**
  - 30 persons (29%) had done so in the **Employment Tribunal**
  - 28 persons (27%) had done so in the **Social Security Tribunal**

Intention to exercise rights in higher courts:

- Of respondents who were asked if they intended to exercise rights of audience in the High Court and/or Court of Appeal:
  - 193 persons (70%) indicated - yes
  - 82 persons (30%) indicated - no

- Of respondents who were then asked in which area would they intend to exercise rights of audience in the High Court and/or Court of Appeal:
  - 147 persons (75%) indicated – civil
  - 81 persons (42%) indicated – criminal