

DRAFT SOLICITORS' (RIGHTS OF AUDIENCE IN HIGHER COURTS) REGULATIONS

The Council of the Law Society of Northern Ireland, in exercise of the powers conferred on them by Articles 6(1A), 9A, 74(1) and 75(1) of the Solicitors' (Northern Ireland) Order 1976 and all other powers enabling them in that behalf, and with the concurrence of the Lord Chief Justice of Northern Ireland, and of the Department of Justice, given after consultation with the Attorney General hereby makes the following Regulations:

Introduction

These Regulations relate to the granting of authorisation to solicitors to exercise rights of audience in the Higher Courts in Northern Ireland under Article 9A of the Order.

1.1 These Regulations provide for

- (i) the manner in which an application shall be made to the Society for an authorisation under Article 9A of the Order; and
- (ii) the education, training or experience required to be obtained before the Society shall grant [or shall be taken to have granted] such authorisation.

1.2 These Regulations shall be cited as the Solicitors' (Rights of Audience in Higher Courts) Regulations.

1.3 These Regulations shall come into operation on the day of .

2.1 In these Regulations unless the context otherwise requires:-

“authorised solicitor” means a solicitor who holds an authorisation under Article 9A of the Order to have the same right of audience in any proceedings in the High Court or Court of Appeal as counsel in those courts;

“Higher Courts” means the High Court and the Court of Appeal;

“the Council” means the Council of the Society;

“the Order” means the Solicitors (Northern Ireland) Order 1976 as amended;

“qualification” means a dedicated equivalent qualification in Higher Court advocacy;

“Society” means the Law Society of Northern Ireland.

2.2 The Interpretation Act (NI) 1954 applies to the interpretation of these Regulations as applies to a statutory instrument.

3. Qualification to obtain authorisation to exercise additional rights of audience

- 3.1** Subject to paragraph 3.2, a solicitor applying to obtain authorisation under Article 9A of the Order must-
- (a) hold a current Practising Certificate from the Society;
 - (b) have three years' post-qualification experience prior to the date of his/her application; and
 - (c) must have successfully completed the training course specified in Schedule 1.

3.2 A solicitor who –

- (a) has been granted a Certificate in Advanced Advocacy by the Society on or before the commencement of these Regulations; and
 - (b) has completed the course specified in Schedule 2;
- shall be taken to hold such authorisation.

4. Qualification gained in another jurisdiction

- 4.1** A solicitor may apply for authorisation under Article 9A of the Order relying on qualification(s) gained in another jurisdiction.
- 4.2** Each application will be considered on its merits by the Society which may require the applicant to undertake such steps as it may specify in order to gain the authorisation.

5. Application for an authorisation

- 5.1** A solicitor shall make an application for authorisation under Article 9A of the Order by lodging with the Society:
- (a) the application form set out in Schedule 3 together with such information as the Society may reasonably require for the purpose of determining the application; and
 - (b) a fee of £100.

At any time after receiving the application and before determining it the Society may require the applicant to provide it with further information.

- 5.2** The Society shall grant authorisation if it appears to the Society, from the information furnished by the applicant and any other information it may have, that the applicant has complied with the requirements applicable to the applicant by virtue of these Regulations.
- 5.3** 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.

5.4 Authorisation under Article 9A of the Order ceases to have effect if, and for so long as, that person does not have in force a certificate issued by the Registrar in accordance with the provisions of the Order authorising him to practise as a solicitor.

6. Continuing Professional Development

6.1 A solicitor who has been granted authorisation under Article 9A of the Order is subject to the continuing professional development requirements set out in the Solicitors' Training (Continuing Professional Development) Regulations 2004 and is required to undertake annually 3 hours of continuous professional development in advocacy skills or the law of evidence.

7. Review

7.1 The Society shall keep the general operation of these Regulations under review to ensure that they are consistent with the requirements of Article 9A of the Order.

7.2 Without prejudice to Regulation 7.1, the Society shall conduct a formal review of the operation of these Regulations following the third anniversary of the commencement of these Regulations.

7.3 Where the Society has conducted a review under this Regulation, it shall publish the result of the review –

- (a) as soon as is reasonably practicable;
- (b) in such form as it considers appropriate; and
- (c) together with any proposals it may have with respect to the matters reviewed.

7.4 When conducting a review under this Regulation, the Society shall have regard to –

- (a) any representations made by the Lord Chief Justice;
- (b) any representations made by the Department of Justice;
- (c) any representations made by the Attorney General; and
- (c) any other representations which it considers to be relevant.

SCHEDULE 1

The training course shall comprise of two modules:-

- (i) an Evidence module details of which are contained in paragraph (a) below
- (ii) an Advocacy module details of which are contained in paragraph (b) below

Applicants must successfully complete both modules.

The teaching of ethical issues contained in paragraph (c) below is included in both modules. Compliance with professional ethics is a criterion against which assessments are carried out.

(a) Evidence

This module includes instruction on:-

- Hearsay evidence
- Confessions
- Bad character
- Exclusion of unfair evidence
- Adverse inferences and the right to silence
- Civil evidence and discovery
- Practical implications of civil evidence
- Drafting

The following methods of instruction are to be employed in this module:

lectures, the provision of written instruction material, and audio-visual or other practical demonstration by the persons conducting the training for the module in relation to any of the matters specified above.

This module comprises 16 hours of teaching.

The applicant's ability is assessed by way of a 2 hour examination in which written advocacy is tested. Applicants are required to prepare written submissions on the law and facts based on a detailed scenario, anticipating and addressing potential arguments for the other side or issues which the court may raise.

If an applicant is required to re-sit this element of the course, the re-sit involves an oral argument to the court based on a detailed submission or application arising from a case scenario. In this, the applicant is required to deal with not only their arguments but those of the other side and questions likely to be raised by the court.

(b) Advocacy

This module includes instruction in relation to both criminal and civil advocacy in all court tiers on:

- Case analysis
- Opening speech
- Examination in chief
- Cross-examination
- Re-examination
- Expert witnesses
- Making legal submissions
- Use of exhibits
- Closing speeches
- Appeals

The following methods of instruction are to be employed in this module:

lectures, the provision of written instruction material, and audio-visual or other practical demonstration by the persons conducting the training for the module in relation to any of the matters specified above;

This module comprises an intensive 5 day programme culminating in a trial.

Assessment is by way of continuous review of the applicant's performance by those conducting the module, and the provision of comment and critique by them upon the applicant's presentation of oral advocacy;

(c) Ethics

Applicants must be familiar with and understand the Law Society of Northern Ireland Code of Conduct for Solicitor Advocates and the provisions of the Solicitors' (Northern Ireland) Order 1976 and be able to:

- resolve issues arising from unintentional or inadvertent disclosure of confidential or privileged information.
- resolve potential and actual conflicts including conflicts arising between the advocate's duty owed to the client and the advocate's duty to the Court.
- advise on potential conflicts between acting as an advocate for a client and becoming a potential witness for that client.

- recognise when an advocate may become professionally embarrassed and have to withdraw from a case.
- advise the client of the advocate's need to maintain professional independence and the associated need to draw any unfavourable law of which the advocate is aware to the attention of the court.
- comply with courtroom etiquette.

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SCHEDULE 2

Course of Training in Evidence and Pleading in the Higher Courts

The course shall comprise of:

- (i) an evidence module which will include practical applications of the law of evidence in the Higher Courts and
- (ii) an advocacy module which will include the presentation of
 - (a) oral advocacy in the Higher Courts
 - (b) the preparation of pleadings and submissions in the form used in cases in the Higher Courts
- (iii) teaching on the procedure employed in the Higher Courts.

The following methods of instruction are to be employed in the course:

lectures, the provision of written instruction material, and audio-visual or other practical demonstration by the persons conducting the training course in relation to any of the matters specified above;

The course comprises 6 hours of teaching.

SCHEDULE 3

APPLICATION FOR AUTHORISATION UNDER THE SOLICITORS' (RIGHTS OF AUDIENCE IN HIGHER COURTS) REGULATIONS

First Name

Surname

Firm/Organisation

Correspondence address

Post Code

Telephone

Fax

Email

Date of admission to the Roll of Solicitors:

Roll No:

I hereby apply for an authorisation under Article 9A of the Solicitors' (NI) Order 1976.

I confirm that

- (a) I hold a current Practising Certificate from the Society
- (b) I have three years' post qualification experience prior to the date of this application
- (c) I have successfully completed the training course specified in Schedule 1 of the Solicitors' (Higher Rights of Audience) Regulations

I enclose application fee of £100.

I hereby declare that the facts set out by me in support of this application are true.

Dated this day of 20

Signed