



## **Guidance on compulsory Continuing Professional Development (CPD) for Solicitor Advocates**

### **1. Introduction**

**The [proposed] Rights of Audience (Amendment Rules) 2019 (the 2019 Rules) [look to] amend Rule C.4. of the Law Society of Scotland Practice Rules 2011 to include a requirement for compulsory Continuing Professional Development (CPD) for Solicitor Advocates.**

The 2019 Rules propose inserting the following new Rule C4.4.59 stating:

*“Requirement to demonstrate continuing professional development*

4.4.59 Every solicitor advocate shall undertake a minimum of ten hours continuing professional development related to their practice as a solicitor advocate and shall produce that record to the Council on an annual basis in such form as may be prescribed by the Council from time to time.”

The 2019 Rules also define the following:

“Continuing professional development” has the meaning given by regulation 2 of Solicitors (Scotland) (Continuing Professional Development) Regulations 1993” (the 1993 Regulations).

### **2. What is this specific CPD requirement?**

This requirement will come into effect from [**TBC**] for all Solicitor Advocates who hold a practising certificate. This new requirement is for at least 10 hours of CPD related to practice as a Solicitor Advocate. The 10 hours form part of the existing 20 hours of CPD required each year and a sample will be monitored annually by the Society.

### **3. What does “related to their practice as a solicitor advocate” mean?**

The purpose of the required CPD is to ensure standards of advocacy in the higher Courts. Accordingly, CPD will have to be “focussed” and involve the elements of advocacy necessary in the higher courts. It is recognised that a number of Solicitor Advocates deal primarily with written work, so CPD may relate to developing written pleadings / written opinions as well as to oral advocacy.

It is essential that Solicitor Advocates when planning CPD to fulfil these requirements not only consider the original definition of CPD under the 1993 Regulations, namely “relevant education and study by a solicitor to develop his or her professional knowledge, skills and abilities” but also the requirement that CPD is “related to their practice as a solicitor advocate”. In this respect a Solicitor Advocate should focus their CPD on the maintenance and enhancement of the Statement of Standards for Solicitor Advocates.

In addition, the criteria for verifiable CPD will be applicable here to Solicitor Advocates as they are applicable to a solicitor, namely that CPD will:

- (i) Have clear aims and outcomes relevant to the solicitor’s professional development **as a Solicitor Advocate**;
- (ii) Provide interaction and/or the opportunity for feedback;
- (iii) Be able to be evidenced; and
- (iv) Is not part of a Solicitor **Advocate’s** daily work.

As such passive attendance at a general criminal law conference would not count. Similarly, a Solicitor Advocate who specialises in Environmental Law could not claim focussed CPD for a seminar on environmental authorisations and permits notwithstanding that that is their specialism in their practice as a Solicitor Advocate. However, where a Solicitor Advocate is preparing for and actively delivering training on black letter law to others, this may be included as focussed CPD where such activity is analogous to the preparation and presentation of a case in court.

#### **4. So what types of topics may count as “focussed CPD”?**

As stated above, topics could include advocacy in the higher courts e.g. dealing with vulnerable witness where this can be applied to advocacy in the higher courts; advanced advocacy or advanced drafting skills; or advanced pleadings. In addition, topics include any of the performance indicators within the [Statement of Standards for Solicitor Advocates](#).

The Society will advise practitioners if it is notified by the Lord President of any particular areas of concern and update this guidance accordingly. Examples of specific areas of concern already notified to the Society are:

- The ability of practitioners to recognise the role of the examiner and cross examiner as being to ask questions and not to make comments in the course of doing so;
- The ability of practitioners to frame a question which would be understandable to an ordinary lay person;
- The proper application of section 274 of the Criminal Procedure (Scotland) Act 1995
- Unnecessary repetition during the course of cross examination of questions and answers already given in examination-in-chief;
- Poor preparation of lines of examination and cross examination; and
- The making of reckless and unwarranted statements in jury speeches.

#### **5. How much “focussed CPD” should be undertaken annually?**

The requirement is for 10 hours of focussed CPD per annum.

## **6. What form can the “focussed CPD” take?**

The focussed CPD should be achieved through verifiable CPD.

## **7. CPD as a Solicitor and “focussed CPD” as a Solicitor Advocate**

It is of course recognised that there will be CPD that covers both practice as a solicitor and as a Solicitor Advocate, however, it is considered that Solicitor Advocates would exercise their professional judgement in recognising what is relevant to development of their practice as a Solicitor Advocate, much as they would for the normal CPD requirements in relation to their development of professional knowledge, skills and abilities as a solicitor.

Where a Solicitor Advocate has undertaken the Rights of Audience course of training prior to being granted Rights of Audience in the same practice year in which they have been granted Rights of Audience, that training will count as “focussed CPD” for that practice year to avoid any “doubling up”.

It is recognised that there are a number of practitioners who have been granted extended rights of audience but do not routinely exercise those rights. Notwithstanding that some Solicitor Advocates may not exercise their extended rights on a regular basis, in order to ensure the quality of the advocacy that those rights allow, all Solicitor Advocates will be required to undertake the 10 hours of “focussed CPD”.

## **8. Recording and monitoring of Solicitor Advocate CPD?**

Please record this “focussed CPD” in your usual manner. Please clearly identify it as “focussed CPD” in any returns.

The CPD process will include annual monitoring undertaken by the Society to ensure that the CPD being undertaken by Solicitor Advocates is suitably focussed. A representative sample of CPD records will be requested at random from all practising Solicitor Advocates and will be studied in detail on an annual basis in order to ensure that appropriate “focussed CPD” is being undertaken and therefore the quality of knowledge, skills and ability of Solicitor Advocates in their practice as a Solicitor Advocate and the maintenance and enhancement of the Standards for Solicitor Advocates can be assured.

## **9. Failure to comply**

Solicitors Advocates are reminded of the following potential:

Regulation 6 of the Solicitors (Scotland) (Continuing Professional Development) Regulations 1993:

“Breach of any these Regulations may be treated as professional misconduct for the purposes of Part IV of the Act (Complaints and Disciplinary Proceedings)”