



Arrangements for qualified lawyers transferring to become solicitors in England and Wales

Consultation paper

Education and Training – Policy

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Context

Aim of the proposed new arrangements

The SRA's purpose is to set, promote and secure in the public interest standards of behaviour and professional performance necessary to ensure that clients receive a good service and that the rule of law is upheld.

We set and regulate the requirements for qualification as a solicitor in England and Wales—the 'domestic route' to qualification. We are seeking views on proposals to introduce a new scheme that will allow qualified lawyers from within the UK, Europe and many other countries to qualify as solicitors in England and Wales without following the full domestic requirements. The new scheme, the Qualified Lawyers Transfer Scheme (QLTS), will replace the current Qualified Lawyers Transfer Regulations (QLTR) and the Qualified Lawyers Transfer Test (QLTT).

The QLTR were introduced in 1990. Much has changed during the 18 years or so since they were introduced. The proposals on which we are consulting reflect

- changes to legal education and to the domestic route to qualification as a solicitor in England and Wales,
- the establishment of the Solicitors Regulation Authority (SRA), with its core duty to regulate the solicitors' profession in the public interest and in accordance with the principles of good regulation,
- the Legal Services Act, which will create opportunities for legal services providers to establish new forms of business structure,
- obligations on members of the World Trade Organisation (WTO) to afford no-less-favourable treatment to some WTO members than others.

The proposals also take into account obligations on EU member states to facilitate the free movement of individual citizens, and the experience of operating the QLTR over a number of years.

More specifically, we aim to

- ensure that all solicitors, however they have qualified and wherever they work, are competent to practise, and
- open the scheme up to lawyers from a larger number and a wider range of jurisdictions.

The Solicitors Regulation Authority and its role

We are committed to the regulatory objectives set out in the Legal Services Act 2007 to, amongst other things, protect and promote the public interest and the interests of consumers, encourage an independent, strong, diverse and effective legal profession, and to promote and maintain adherence to the "professional principles".

The professional principles include independence and integrity, confidentiality and the proper maintenance of standards.

We are committed to setting and maintaining standards of qualification for the solicitors' profession and to enhancing the competence, performance and ethical conduct of solicitors and others working in solicitors' firms. We aim to ensure that people from diverse backgrounds can qualify as solicitors and that consumers have a choice of providers of legal services. We also aim to work within the principles of good regulation. Our review of the transfer scheme is taking place in the context of our strategic objectives.¹

We must ensure that all who qualify as solicitors² have the knowledge, skills and ability necessary to perform their role competently and ethically. This is our priority as we review the transfer scheme. We have traditionally welcomed lawyers wishing to practise in England and Wales using their own qualification. We have also had in place for many years arrangements for lawyers from a number of countries who want to qualify as solicitors in England and Wales. We intend to extend opportunities to more lawyers who are not currently eligible to transfer to do so, but only if they can first demonstrate that they are competent to practise as a solicitor.

The SRA was established in the context of fundamental changes to the way the legal professions in England and Wales can work and are regulated. The Legal Services Act 2007 is opening up opportunities for solicitors to enter into partnership with other lawyers and non-lawyers to deliver legal services in new types of ways; the aim is so to improve competition, flexibility and consumer choice. In due course, lawyers in England and Wales will be able to go into multidisciplinary practices, working with non-lawyers in organisations that provide a range of professional services to clients.

The opportunities already available to lawyers qualified in other jurisdictions to work in England or Wales under their own title and to become registered foreign lawyers (RFLs) in order to enter into partnership with solicitors, or registered European lawyers (RELs), will be wide. It will continue to be necessary to qualify as a solicitor in England and Wales in order to undertake, without supervision, the areas of work that only solicitors or other designated lawyers are allowed to do—aspects of conveyancing (land transfer), probate and litigation—but for many lawyers qualification as a solicitor is not essential for the work they will undertake or the roles they will fulfil. The proposals set out in this paper should be considered in this context.

Current arrangements

The SRA regulates solicitors admitted in England and Wales. One of our responsibilities is to set the standards of qualification. Members of the public who seek advice and representation from solicitors need to be confident that all solicitors, however they have qualified, have the knowledge, skills and ability needed to work

¹ See www.sra.org.uk/strategy.

² Throughout the document, we use the term "solicitor" as a shorthand term for a solicitor admitted in England and Wales.

effectively as a member of the profession. All solicitors have the same rights and responsibilities and all routes to qualification need to recognise this.

There are two main routes to qualification as a solicitor. Most people currently qualify by

- passing a law degree or an equivalent level law course, and
- completing a one-year course and exams in professional legal skills and practice (a Legal Practice Course³) and
- undertaking two years' working under the supervision of an experienced solicitor admitted in England and Wales in a training contract,⁴ during which they must work in at least three different areas of law, gain experience of both contentious and non-contentious work and complete a Professional Skills Course. We are currently piloting an approach to work-based learning that could, in due course, change or replace the training contract requirements.⁵

This is described as the “domestic route” to qualification in the paper and it takes most individuals who study and train on a full-time basis six years to complete.⁶ It combines academic and professional study with a period of learning in practice.

However, around 20 per cent of solicitors who qualify each year follow the second route to qualification, described as the “transfer route”, because they have already qualified as a lawyer in another jurisdiction or because they have already qualified as a barrister in England and Wales. This second route to qualification, the transfer route, is available to people who are qualified as lawyers in, and are citizens of, EU member states, together with lawyers who have qualified in a number of named jurisdictions in which the legal system is based on the common law (therefore similar to that used in England and Wales) and to barristers, solicitors and advocates qualified in England and Wales, Scotland or Northern Ireland.

People who are eligible to qualify in this way are required to

- pass between one and four of the examinations (as specified by the QLTR) that make up the QLTT, unless they are granted a total exemption from all exams. UK and international (not EU) applicants can also be required to satisfy an experience requirement of up to two years.

The subjects that make up the QLTT are

- Professional Conduct and Accounts
- Litigation

³ See www.sra.org.uk/lpc.

⁴ See www.training.sra.org.uk.

⁵ See www.sra.org.uk/wbl.

⁶ A variation of the domestic route to qualification is available to individuals who have qualified as a Fellow of the Institute of Legal Executives.

- Property, and
- The Principles of Common Law.

The domestic route to qualification has been reviewed during recent years. The domestic route has, and continues to be, updated and reformed to place a stronger emphasis on what people who complete the route know and can do before they are awarded the qualification. We are focusing increasingly on the standard of achievement rather than on the detail of the learning process. The review of the transfer route to qualification has been underpinned by a commitment to introduce a similar emphasis for the scheme for qualified lawyers seeking to qualify as solicitors and to achieve parity in the standard of the two routes to qualification.

A significant proportion of lawyers who qualify as solicitors under the provisions of the QLTR never actually practise as solicitors. Of those who do take out a practising certificate, most practise successfully. There is evidence, however, that solicitors who have qualified using the transfer route are statistically more likely than those who have followed the domestic route to qualification to be the subject of regulatory procedures. One possible explanation for this is that the current transfer arrangements do not adequately assess applicants' knowledge, skills and understanding of law and legal practice in England and Wales. The proposals for more rigorous assessment, that are a feature of the scheme on which we are consulting, should help ensure this is not the case in the future.

The current transfer scheme is not based on reciprocal arrangements. We do not propose that the new scheme should require reciprocity either. We recognise that many jurisdictions adopt a less liberal approach both to allowing lawyers qualified in other jurisdictions to practise in their market and facilitating qualification. However, we do not consider the approaches of other jurisdictions to be a relevant factor to take into account as we decide which jurisdictions should be covered by the transfer scheme.

Proposals on which we are consulting

We propose the introduction of a transfer scheme (QLTS) that

- is based on the same standards of knowledge, skills and ability that are required of those who follow the domestic route to qualification,
- is based on the same test of character and suitability that is used to assess those following the domestic route to qualification,
- recognises that qualified lawyers who are eligible to apply under the transfer scheme should already have demonstrated by way of their home qualification scheme the core knowledge and skills needed of all lawyers,
- assesses the ability of applicants to apply their knowledge and skills in the context of English/Welsh law and legal practice,
- is open to lawyers qualified in a larger number and wider range of jurisdictions than is currently the case.

Common standards of knowledge, skills and ability

We have published a statement of what all solicitors who follow the domestic route to qualification should know and be able to do at the point of qualification. This statement is described at the “day one outcomes”.⁷

We have described the essential knowledge, skills and ability using the six headings of

- core knowledge and understanding of the law applied in England and Wales,
- intellectual, analytical and problem-solving skills,
- transactional and dispute resolution skills,
- legal, professional and client relationship knowledge and skills,
- personal development and work management skills,
- professional values, behaviours, attitudes and ethics.

Solicitors inevitably and properly expand their knowledge and develop their skills and ability with experience. Many transferees will have experience of practising as lawyers when they apply to the transfer scheme. We propose, however, that the benchmark against which transferees should be assessed is the same as that applied to individuals at the time that they initially qualify under the domestic route to qualification. The statement of what all solicitors should know and be able to do at the point of admission will be the benchmark for deciding what qualified lawyers should demonstrate they know and are able to do before they can be admitted as solicitors.

We have considered the knowledge and skills that the lawyers who will be eligible to apply to the transfer scheme will already have demonstrated in the context of their initial qualification. For example, all eligible applicants will have demonstrated that they have the intellectual, analytical and problem-solving skills at the appropriate level because, to be eligible, they will need to have a qualification at the level of an honours degree or higher (see below). We expect that all qualified lawyers will have already demonstrated the skills of personal development and work management that we require solicitors to have at the point of admission. However, the knowledge and skills required under the remaining headings will be more specific to practice as a solicitor in England and Wales, and we will need specific evidence that transfer applicants have met the standard required.

Using the day one outcomes as a starting point, we propose that all transferees should be required to demonstrate that they have the equivalent knowledge and understanding of law and practice in England and Wales in the following areas as that required of individuals who qualify under the domestic route:

⁷ See www.sra.org.uk/securedownload/file/229.

- solicitors' accounts, professional conduct, financial regulation,
- property and probate,
- litigation,
- business law and practice,
- contract and tort,
- the English legal system, incorporating equitable rights, human rights and EU law.

We also propose that transferees should demonstrate that they have the skills and attributes to apply their knowledge of the law and the regulatory requirements in the context of the English and Welsh legal services environment, namely:

- transactional and dispute resolution skills,
- legal, professional and client relationship skills, and
- professional values, behaviours, attitudes and ethics.

Question 1

Should we use the day one outcomes as the benchmark against which transferees should be assessed? If your answer is "no", please explain your reasons and suggest an alternative approach.

Question 2

Should transferees be required to demonstrate the knowledge and skills set out above? If your answer is "no", please explain.

Common standards of character and suitability

The purpose of both the current and the proposed transfer scheme is to recognise that qualified lawyers have already demonstrated the knowledge and skills required to qualify as a lawyer in their home jurisdiction, albeit that they have not demonstrated that they have the knowledge, skills and ability specific to practising as a solicitor. However, regardless of their qualification, we also need to be confident that their conduct in practice is in line with the conduct we would expect of a solicitor. It will be essential that we have evidence of transfer applicants' good standing in their home jurisdiction and in any other jurisdictions in which they have qualified as lawyers before we admit them as solicitors. We will require references from people who can comment objectively on an applicant's standing. We will also require current certificates of good standing from the applicant's home professional/regulatory body. In line with our procedures for the admission of people who have followed the domestic route to qualification, we will require disclosure from the UK's Criminal Records Bureau, and, where possible and appropriate, from equivalent bodies in other jurisdictions. The costs of the character and suitability enquiries will be reflected in the fee charged to applicants.

We have published guidelines for use when deciding whether a person has the character and suitability to be a solicitor.⁸ These guidelines set out the expectation that we should only allow to be admitted as solicitors people who we can be confident are

- honest and trustworthy, and
- willing to comply with regulatory requirements, and
- able responsibly to manage financial affairs for themselves and clients,

and that there is no reasonable risk that an individual's admission will

- be harmful to members of the public, the profession or to him or herself, or
- diminish the public's confidence in the solicitors' profession.

We use the same guidelines for all who apply to become solicitors, including transferees. We will continue to use these common guidelines for assessing the character and suitability of applicants applying under the QLTS. We will vary the nature of the evidence we will require, according to where the applicant lives and works, and the availability of independent evidence of their character and suitability, including information about any criminal convictions or financial irregularities.

Question 3

Do you have any comments on our approach to assessing the character and suitability of transfer applicants?

Categories of qualified lawyer eligible to apply to the new transfer scheme

Qualified lawyers who will be eligible to apply under the QLTS will fall into one of the three following categories:

- Lawyers qualified and entitled to practise in a jurisdiction in which the role and regulation of the legal profession of which they are a member is sufficiently similar to that of a solicitor to make it unnecessary for the applicant to follow the full domestic route to qualification in England and Wales (see below)—international lawyers
- Lawyers who are entitled to have their professional legal qualification recognised in accordance with the EU Directive 2005/36/EC—European lawyers
- Lawyers qualified and entitled to practise as a solicitor, advocate or barrister in the UK—UK lawyers

⁸ See www.sra.org.uk/documents/students/student-enrolment/characterguide.pdf.

Eligibility to apply to transfer

In order to be considered for transfer, applicants will need to demonstrate that they are entitled to practise under their professional title in their home jurisdiction without the need to complete additional education, training or assessments. This means that eligibility to transfer will be determined by the right of the applicant to practise under their home title rather than simply by the award of the title, which can happen at different stages of the qualification process. The transfer scheme recognises that lawyers who have completed the process to practise as a lawyer do not need to complete the full domestic route to qualification. The rationale for the scheme will be undermined if people who are part way through a qualification scheme are also entitled to transfer. The scheme is not open to people who have completed part of the domestic route to qualification.

Such a requirement applies in the current scheme, with the exception of barristers called to the Bar in England and Wales. People called to the Bar of England and Wales are given the title “barrister” after they have completed the Bar Vocational Course (BVC), the equivalent of the Legal Practice Course, but before, and regardless of, their completion of pupillage. Although they have the title “barrister” they are not entitled to practise as such unless and until they have completed pupillage.

The current transfer scheme therefore provides an alternative “domestic” route to qualification as a solicitor for people who have chosen to undertake a BVC.

We are of the view that it would be inequitable to retain the current exception made for barristers. We therefore propose that the standard eligibility requirement should apply to barristers of England and Wales, too, and that they should be entitled to practise under their professional title—to have completed pupillage—before they are eligible to transfer to become solicitors. As the range of jurisdictions covered by the transfer scheme is extended, there may be other jurisdictions in which the professional title is awarded ahead of completion of the qualification process, in which case the same principle will apply.

Applicants must have followed the full route to the qualification on which they are basing their application. In other words, if they have qualified as a lawyer in a second jurisdiction because their first qualification was recognised under the equivalent of a transfer scheme and without, therefore, completing the full qualification scheme in the second jurisdiction, they will need to apply to the QLTS on the basis of their original qualification. The only exception to this requirement will be for EU nationals to whom some specific EU requirements apply.

Question 4

In order to be eligible to apply to transfer, should applicants need to be entitled to practise under their initial professional title without the need to complete further education, training or assessments? If your answer is “no”, please explain.

International lawyers

Proposals to open the transfer scheme up to a wider range of jurisdictions give rise to the following questions:

- Should lawyers from all jurisdictions in the world be able to take advantage of the transfer route to qualification, regardless of the level of their qualification, the approach to the rule of law within the jurisdiction and the approach to professional conduct and regulation (the ‘no restriction’ on jurisdictions approach)?
- Or, should access to the transfer route to qualification be limited to lawyers from jurisdictions in which there is reasonable comparability with England and Wales on the role and regulation of lawyers (the “recognised” jurisdictions approach)?

These questions go to the heart of the proposals to open up the transfer scheme to lawyers from a greater number and a wider range of jurisdictions. Arguments for and against the different approaches are set out below.

Arguments in favour of a “no restrictions” on jurisdictions approach, whereby anyone claiming to be a lawyer, qualified in any jurisdiction in the world, could apply to qualify as a solicitor under the provisions of the new transfer scheme, include the following:

- If the transfer assessments are sufficiently expansive and rigorous, applicants’ prior knowledge and qualifications are irrelevant to their entitlement to attempt the transfer assessments. The transfer scheme would be entirely outcomes-based.
- Similarly, an applicant’s home jurisdiction’s approach to the rule of law, the regulation of lawyers and professional conduct requirements are irrelevant if the applicant is required to demonstrate by way of the transfer assessments that they understand and can work within the legal and regulatory systems of England and Wales.
- If the transfer scheme is available to lawyers from all jurisdictions, potentially difficult and quasi-political decisions about which jurisdictions to include in, and which to exclude from, the transfer arrangements will be avoided.
- If all lawyers from all jurisdictions are included, the risk of discriminatory practice is avoided.

Under a “recognised” jurisdictions approach, the SRA would introduce a mechanism to identify which lawyers from which jurisdictions would be eligible to qualify as a solicitor under the provisions of the new transfer scheme. Arguments in favour of this approach include the following:

- The transfer scheme exempts people who have already demonstrated their understanding of what it means to be, and to practise as, a lawyer from the full domestic route to qualification as a solicitor in England and Wales. However, for such a scheme to be justified, there must be at least a similarity

between the role of lawyers in the applicant's home jurisdiction and that in England and Wales.

- The domestic route to qualification is not purely outcomes-based. It is not sufficient for an individual to demonstrate by way of assessment only that they have the knowledge and skills required to practise as a solicitor. Prescribed course attendance and regulated experience requirements are part of the domestic route to qualification. This means, for example, that people who have an English/Welsh law degree and many years of experience as, perhaps, a licensed conveyancer, a paralegal or an accountant still must complete the full domestic route to qualification. It would therefore be inequitable to introduce a purely outcomes-based approach to qualification for anyone who had first qualified as a lawyer in another jurisdiction, without having any regard either to the nature of their qualification or to the role and regulation of lawyers in their home jurisdiction.
- Evidence that qualified lawyers are in good standing in their home jurisdiction when they apply to transfer is and will remain a key part of the transfer process. Such evidence is provided in a certificate of good standing from the applicant's home regulatory body. If no regard is had to a jurisdiction's regulatory framework, applications could be received from lawyers qualified in jurisdictions in which there is no regulatory body, or in which lawyers' entitlement to practise can be removed because of their personal political views or because they have defended a client against the government. In such cases, it would be difficult to differentiate between applicants who were seeking to qualify in England and Wales because they had been struck off for "genuine" malpractice in their home jurisdiction, those who had been struck off because they had offended the regime of the time and those who qualified in a jurisdiction in which there is no, or no reliable, approach to disciplinary action at all.
- If no regard is had to the qualification or the regulatory regime in a jurisdiction, access to the transfer scheme might be given to people who might not normally be regarded as lawyers at all.

In view of the balance of the arguments, we propose that the "recognised" jurisdictions approach should be adopted and that the new transfer scheme should be accessible only to regulated lawyers with a professional role broadly similar to that of a solicitor. In response to demand, the scheme should, in due course, be extended to all jurisdictions in which

- the system of professional regulation does not compromise lawyers' ability to act independently of government and to act in the best interests of their clients,

- the professional qualification requires completion of specific education and training at a level that is at least equivalent to that of an English/Welsh honours degree,⁹
- members of the profession are bound by an ethical code that requires them to act without conflicts of interest and to respect their clients' interests and confidentiality, and
- members of the profession are subject to disciplinary sanctions for breach of their ethical code, including the removal of the right to practise.

We recognise that this approach may prevent lawyers from some jurisdictions following the transfer route to qualification as a solicitor; they will instead need to complete the domestic route, or to practise in England and Wales under their home professional title. We recognise that the approach could impact on lawyers from some oppressive regimes, including on individuals who might be seeking to qualify as a solicitor in order to secure a career outside of their home jurisdictions.

As stated, the transfer scheme provides a route to qualification for lawyers whose qualification as, and understanding of the role of, a lawyer means that they are able to make the transition to practise as a solicitor without the need to follow the domestic route to qualification. In a jurisdiction in which there is government interference in either or both the types of cases a lawyer can take on, and/or the part they are permitted to play in maintaining the rule of law, the role of the lawyer is not sufficiently similar to the role of a solicitor to make the transfer route open to them. In such circumstances, the completion of the domestic qualification scheme would be necessary.

If the proposed approach is implemented, the jurisdictions that meet the requirements and the professions within those jurisdictions whose members should be eligible to apply will need to be identified. This will be a significant exercise. To avoid lengthy delay, we propose that the research should be phased. We propose that the principles, but not the names of either the jurisdictions or the professional titles, should be included in the new QLTS regulations. This will allow research into the jurisdictions to be undertaken in a staged, informed and timely way, and in response to demand from applicants. We do not suggest that an all-encompassing list be attempted but that it should evolve according to applications received.

A mechanism will need to be put in place to gather and consider evidence on the role and regulation of lawyers in particular jurisdictions against the agreed criteria. We propose that consultation with the Law Society's International Division should be part of the mechanism and that decisions should be evidence-based and transparent. The process will need to be ongoing and provide for reviews of initial decisions in response to changes within particular jurisdictions.

⁹ We will use the expertise of UK NARIC, the UK's National Recognition Information Centre that undertakes comparison and provides advice on international qualifications, to advise on equivalence.

We have considered whether there should be some flexibility to allow lawyers from jurisdictions that are not covered by the transfer scheme to make special applications to qualify using the transfer route.

If the proposed approach to “recognised” jurisdictions is adopted, two types of appeal might be put forward:

- by an individual seeking to be allowed to access the transfer route to qualification, albeit that they are qualified in a jurisdiction that does not meet the criteria, or
- by an individual, by a group of individuals, or by an authority within the jurisdiction, on the basis that the jurisdiction does in fact satisfy the criteria set for inclusion in the transfer scheme.

The arguments in favour of allowing for the first type of appeal are that

- it would be unfair to exclude good lawyers from the transfer scheme and to require them to complete the full route domestic route to qualification simply because of the jurisdiction in which they initially qualified,
- it would be particularly unfair to exclude from the transfer scheme individuals who qualified in a jurisdiction at a time when the role and regulation of lawyers was comparable with arrangements in England and Wales.

The following are the arguments against providing for appeals to be considered and exemptions to be made for individuals:

- A lawyer qualified in a jurisdiction excluded from the transfer regime but who had worked in England and Wales or for an English/Welsh firm for many years might, on the face of it, be able to put forward a case in support of their request for access to the transfer scheme. To accede to such a request would undermine the domestic route to qualification, as an English/Welsh law graduate or, indeed, an LPC graduate with considerable experience, is not given access to the transfer scheme. Rather, they are required to complete the full domestic route to qualification.
- A lawyer qualified in an excluded jurisdiction might put forward a case on the grounds that they had actively opposed their home regime’s approach to the role and regulation of lawyers, as a result of which their right to practise in that jurisdiction had been removed. However, such a claim would need to be verified and would need to be considered alongside a case made by a lawyer who had left the jurisdiction at the earliest opportunity and/or who had refrained from public or professional opposition to the regime because of risk to their or their family’s life or livelihood.
- A case might be made on the basis that the individual qualified in their home jurisdiction at a time when the rule of law and regulation of lawyers was comparable to that in England and Wales. However, if such an argument was accepted, a decision would need to be taken about the exact date of the changes that put the jurisdiction outside of the transfer scheme. If the date of qualification was to be taken into account when special requests were being

considered, the date of qualification would need to be taken into account for other applicants. The corollary would be that lawyers who qualified in an included jurisdiction at a time when an oppressive regime curtailed the role and regulation of lawyers should be excluded from the transfer scheme.

- If exceptions/appeals were to be allowed, there is a risk that decisions could be, or could be perceived to be, subjective and potentially discriminatory.
- Lawyers qualified in jurisdictions not covered by the transfer scheme would remain able to qualify using the domestic route to qualification. The fact that they are excluded from the transfer scheme would not prevent them from qualifying as a solicitor or from practising as a lawyer in England and Wales.

In light of these arguments, we propose that there should be no provision built into the transfer scheme for individuals qualified in jurisdictions that do not satisfy the criteria for inclusion in the transfer scheme to make a special case to be allowed to qualify using the transfer route.

However, we propose that there should be a mechanism in place to review decisions as to whether or not a jurisdiction satisfies the requirements.

We will consult with the Law Society's International Division as we decide which jurisdictions satisfy the characteristics and which international lawyers should therefore be eligible to apply under the provisions of the QLTS. We will also consider information from governments and professional/regulatory bodies and independent, authoritative, sources of information. We would similarly consult if changes within a jurisdiction that was included within the transfer scheme brought into question the extent to which it continued to satisfy the principles on which the scheme is based.

Question 5

Should the transfer scheme be open to lawyers from a potentially wider range of jurisdictions than is currently the case? If your answer is "no", please explain why not.

Question 6

Do you agree with the characteristics we propose should be demonstrated by the professions who will be able to access the new transfer scheme? If your answer is "no", what characteristics should be applied?

Question 7

Should we phase the way in which we bring new jurisdictions into the transfer scheme in response to demand? If your answer is "no", please give reasons for your answer.

Assessments

To reflect the three types of lawyers eligible to apply under the scheme, we propose that there should be three different assessments—for international lawyers, European lawyers and UK lawyers.

International Lawyers' Assessment

We propose that the International Lawyers' Assessment should be in three parts:

- written assessments
- practical or "clinical" assessments, and
- a structured interview.

International lawyers should be required to pass **written assessments** covering law and practice in England and Wales in the following areas:

- solicitors' accounts, professional conduct, financial regulation,
- property and probate,
- litigation,
- business law and practice,
- contract and tort,
- the English legal system, incorporating equitable rights, human rights and EU law.

Applicants should also be able to demonstrate that they can apply their knowledge of English/Welsh law and practice in the context of scenarios of the type a solicitor might typically encounter in practice. The second element of the assessments will therefore be **practical**, involving, for example, simulations of solicitor/client interactions, file reviews and court-based scenarios. These assessments will also provide an opportunity for applicants to demonstrate that they have the skills and ability necessary to practise as a solicitor. The practical assessments will be used to assess applicants'

- transactional and dispute resolution skills,
- legal, professional and client relationship knowledge and skills.

We also propose that candidates should demonstrate in a **structured interview** that they have insight into the conduct and behaviour required of solicitors and that they will be able to make a successful transition to practise as a solicitor. The structured interview will be used to assess applicants'

- professional values,
- behaviours,
- attitudes, and
- ethics.

All elements of the assessments will be undertaken in English. Applicants will need to demonstrate that they are able to use English with a level of competence sufficient to take accurate instructions from, and give clear and accurate advice to, clients in English, to understand and draft legal documents in English and to exercise rights of audience.

We propose that the new transfer scheme should not set a specific experience requirement for transferees to complete. Although we recognise that working in English/Welsh law in a well-managed practice and under effective supervision can provide excellent preparation for working as a solicitor, it is not always possible for a transferee to gain such good quality experience. We also recognise that experience alone does not guarantee competence, and that transferees enter the transfer process with very different types and lengths of experience behind them.

We will instead directly assess applicants' understanding of the law of England and Wales and their ability to practise in the law of this jurisdiction. We expect that transferees who do not have experience of practice and/or practical training in the skills required to practise will find it more difficult to pass the practical assessments than other applicants.

We will not provide for international lawyers to be given exemptions from any element of the assessment. We recognise that, for some international lawyers, the law and practice in their home jurisdiction will be similar in many ways to that in England and Wales, and that elements of the assessment should therefore be straightforward to pass. We are of the view that the transfer scheme will be fairer and more reliable if all international lawyers are required to demonstrate their knowledge, skills and ability by passing all elements of the assessments, than if we provide for specific or individual exemptions.

Question 8

Should the International Lawyers' Assessment cover the range of knowledge, skills and ability set out above? If your answer is "no", please give reasons and suggest an alternative approach.

Question 9

Should we assess transferees' ability to act appropriately in situations simulating practice and assess their understanding of law and legal practice in England and Wales? If your answer is "no", please give your reasons.

Question 10

Should international lawyers be required to undertake work-based learning in English/Welsh law as part of the transfer requirements? Please give reasons for your answer and suggest the approach that should be taken.

Question 11

Should international lawyers be required to demonstrate in their assessments that they are competent to take accurate instructions from, and give clear and accurate advice to, clients in English and to understand and draft legal documents in English and exercise solicitors' right of audience? If your answer is "no", please give reasons.

European lawyers

European Directive 2005/36/EC requires us to recognise the professional qualifications of designated lawyers who are EU nationals qualified in an EU member state. We must consider the qualifications and experience of such applicants, and we can require them to pass an aptitude test to make up any gaps between their knowledge and skills and that which is essential to practise as a solicitor.

Alternatively, EU lawyers can qualify as a solicitor in accordance with EC Directive 98/5/EC. To be eligible to qualify using this route the applicant must have effectively and regularly worked as a registered European lawyer in the UK for at least three years. Lawyers eligible to apply under the provisions of this directive are not required to pass any further assessments.

The European Court of Justice's judgement in the *Morgenbesser* case (C-313/01) means that we must consider the extent to which qualifications and experience of an EU national who has not qualified as a lawyer satisfy (in full or in part) the requirements of the domestic route to qualification.

European Lawyers' Aptitude Test

The European Communities (Recognition of Professional Qualifications) Regulations 2007 give effect in the UK to Directive 2005/36/EC. These regulations provide for a competent body, such as the SRA, to require lawyers who are entitled to have their European professional qualification recognised in the context of a transfer scheme to pass an aptitude test, the definition of which is included within the regulations:

24. (1) *An aptitude test means, in relation to the regulated profession which the applicant seeks to take up or pursue in the United Kingdom, a test of the applicant's professional knowledge conducted by the competent authority with the aim of assessing the ability of the applicant to pursue that profession in the United Kingdom.*
- (2) *The test shall take into account that he is a qualified professional in another relevant European State.*
- (3) *The competent authority shall determine the matters to be covered by the aptitude test as follows:*
 - (a) *the competent authority shall establish the subjects which, on the basis of a comparison between the education and training required for the practice of the profession required in the United Kingdom and that received by the applicant, have not been covered by the diploma or other evidence of formal qualifications possessed by the applicant;*
 - (b) *the test shall cover subjects selected from those so established, the knowledge of which is essential for the pursuit of the regulated profession in the United Kingdom; and*
 - (c) *the test may include knowledge of the relevant rules of professional conduct.*

- (4) *The detailed application of the aptitude test and the professional status of an applicant preparing for the aptitude test shall be a matter for the competent authority.*

In light of these requirements, we propose that EU applicants who are applying to transfer under the provisions of Directive 2005/36/EC will, as is the case currently, have their transfer requirements assessed individually. We will, however, use the day one outcomes referred to above as our benchmark for this exercise, and the aptitude test to be taken by an individual will be compiled of appropriate elements of the written and practical assessments that will form the International Lawyers' Assessment.

Question 12

Taking into account the obligations on the SRA, do you have any comments on the approach to the assessment of European lawyers' aptitude to practise as solicitors?

UK Lawyers

The current transfer scheme makes provision for barristers qualified in England and Wales and for solicitors, barristers and advocates qualified in Northern Ireland or Scotland. Such provision will also be included in the new scheme.

To be eligible to apply, applicants will need to have completed the full qualification process necessary for them to practise as a barrister, solicitor or advocate.

UK Lawyers' Assessment

Taking into account the differences in law and practice between the jurisdictions in the UK and the different roles of solicitors, barristers and advocates, we propose that UK lawyers should be required to pass written assessments covering law and practice in England and Wales in the following areas:

- solicitors' accounts, professional conduct, financial regulation,
- property and probate,
- litigation,
- business law and practice.

In addition, applicants will be required to pass the practical assessment and the structured interview that will form elements of the International Lawyers' Assessment.

We recognise that some applicants are likely to find elements of the assessments straightforward. However, confidence in the transfer scheme will be enhanced and the scheme will be more consistently and fairly operated if all eligible applicants are required to pass the full UK Lawyers' Assessment.

Applicants will not be required to complete a specific experience requirement, although, as noted above, they will need to be entitled to practise under their existing title.

Question 13

Do you agree with the proposed assessment requirements for UK lawyers? If your answer is “no”, what, in your view, should be assessed?

Question 14

Should UK qualified lawyers be required to complete any specific experience before being admitted as solicitors? Please give reasons for your answers.

Reasonable adjustments

As the assessments are designed and developed we will attempt to anticipate the types of requests for reasonable adjustments that might be made by disabled applicants and agree how such requests might be dealt with. We will also endeavour, working with the assessment provider, to design out potential disadvantages.

All requests for reasonable adjustments will be considered in accordance with the requirements of the Disability Discrimination Act 1995.

Assessment arrangements

The current QLTT is delivered by a number of organisations that have applied to the SRA for authorisation to become a QLTT provider. These organisations have been given permission to hold the tests in a number of different countries in response to demand.

Considerable investment will be needed to develop and establish the more practical assessments we propose for the new scheme. We will need to evaluate the reliability, validity and quality of the assessments at an early stage. Particular attention will need to be given during the design and the evaluation of the assessments to factors unconnected with an applicant’s knowledge, skills and ability that could influence the result of their assessments. Specifically, we will need to ensure that any potential for discrimination within the assessments is identified and addressed and that the assessment results are monitored and evaluated. We will investigate the costs and benefits of recording the practical assessments and structural interviews so as to promote consistency and reliability and to identify and address any potential concerns about unfairness.

The SRA does not have the infrastructure or the expertise to develop or deliver the assessments directly. We propose instead to appoint, following a competitive tender exercise, an organisation with whom we can work to develop the assessments and who will deliver and mark the assessments on our behalf, subject to appropriate oversight by external examiners who we will appoint. A sole provider could make reasonable predictions about the number of candidates who would take the assessments and could invest accordingly. Multiple providers would be competing for candidates, potentially affecting their confidence to invest in the development of the new style assessments.

There should be some efficiencies of scale available for a sole assessment organisation that could be passed on to the candidates. It is premature to attempt to estimate the costs of the proposed assessments and the fees that will therefore be

charged to candidates, although we are confident that, when compared with the costs of completing the domestic route to qualification, the costs will be modest. We are sensitive to the fact that the new-style assessments, which include a practical element, are likely to be more expensive to run than the current QLTT. Contracting with just one provider would enable us to take the level of the fees into account when considering tender submissions. Our involvement with the assessments would be on a cost-neutral basis. We would need to recover the costs of monitoring and overseeing the assessment arrangements, but we would not otherwise aim to raise income from the scheme. We would use our best endeavours to ensure the assessment costs are reasonable.

We recognise that there are arguments in favour of an arrangement in which any number of providers can set and mark the transfer assessments, subject to effective approval, monitoring and evaluation procedures. We accept, for example, that the current choice of QLTT provider introduces an element of competition that might serve to contain the fee levels charged. We recognise that there is a potentially valuable assessment market which a number of organisations might seek to enter. Organisations can compete on the basis of location and the timing of assessment opportunities, and package assessment fees with preparatory programmes. However, at this stage, we are not persuaded that competition between assessment providers necessarily provides the most appropriate framework within which a new assessment methodology can be developed and standards set and maintained.

We will not require applicants to follow any preparatory courses or programmes ahead of their assessments, but we anticipate that such courses will be available. The organisation appointed to provide the assessments will not be permitted to provide preparatory courses. Such a prohibition will help to preserve the integrity of the assessments. We anticipate that, as with the current QLTT, a range of courses and preparatory materials will become available for candidates to buy.

As the development of the new scheme progresses, we will publish the outcomes to be assessed in each of the elements of the assessment, rules on re-takes, pass marks and procedures to ensure candidates' identity.

The QLTT is currently offered in a number of different countries. We will need to consider whether the new assessments should be available in different countries, too, and, if so, the safeguards that should be put in place to assure the integrity of the assessments.

We will review the operation of the arrangements after a three-year period.

Question 15

Should the SRA work with just one organisation to develop and deliver the transfer assessments? If your answer is "no", please give reasons.

Question 16

Should a sole assessment provider be prohibited from also providing courses to prepare for the assessments? If your answer is "no", please give reasons.

Question 17

What are your views on making the new assessments available outside of the UK?

Distinguished Specialist Practitioners and academic lawyers

The current QLTR make special provision for Distinguished Specialist Practitioners. This provides for lawyers who are not otherwise entitled to apply to transfer under the provisions of the QLTR and who have at least 10 years' practising experience and an acknowledged international reputation as a distinguished specialist practitioner in a field of practice commonly undertaken by solicitors in England and Wales to transfer by passing such parts of the QLTT as the SRA may determine.

This provision is used only occasionally, and we have concerns that the approach introduces an element of subjectivity that conflicts with our commitment to objectivity, consistency and transparency. As we intend to expand the number and range of jurisdictions to which the transfer scheme will apply, we do not propose to make provision for Distinguished Specialist Practitioners in the new QLTS.

Similarly, there is provision in the QLTR for academic lawyers who have taught on courses leading to the qualification as a solicitor for at least 10 years to pass the QLTT and to gain experience in legal practice before they may be admitted as solicitors. Again, this provision is very rarely used. Flexibility has been introduced into the domestic route to qualification. We therefore propose that special provisions for academic lawyers to follow an alternative route to qualification should not be included in the new QLTS.

Question 18

Should special provision be made in the QLTS for Distinguished Specialist Practitioners? Please give reasons for your answer.

Question 19

Should special provision be made in the QLTS for academic lawyers who have not qualified as practitioners? Please give reasons for your answer.

Equality and diversity impact

The SRA is committed to promoting equality and diversity within the solicitors' profession. One of our strategic objectives is to ensure that people joining the profession come from a wide range of backgrounds and experience. We also have a legal obligation to show that our policies and regulations are fair and non-discriminatory. If individuals from particular backgrounds are in any way disadvantaged by a policy, we need to be able to demonstrate that the policy is a proportionate means to achieve a legitimate aim.

We recognise that the introduction of more-demanding assessments for international lawyers might mean that some applicants who would pass the current QLTT without significant preparation would need to extend their knowledge and understanding of

law and legal practice in England and Wales in order to pass the assessments. There will be time and cost implications. However, it is justifiable to require people who want to qualify as solicitors to show that they have the knowledge, skills and ability to practise as such. We will not prescribe how they should prepare for the assessments, allowing applicants to choose how to study.

Similarly, we recognise that the requirement on all applicants to show they have English language skills necessary for practice might be more difficult to achieve for applicants whose first language is not English. However, solicitors need to be able to interpret and draft legal documents and to communicate effectively with clients, colleagues, other lawyers and professionals and with the courts. Language skills are essential for solicitors. It is therefore justifiable to require people who want to qualify as solicitors to demonstrate that they have the skills necessary to work effectively as a member of the profession.

The opening up of the transfer scheme will greatly advantage lawyers qualified in countries not recognised by the current QLTR. Lawyers qualified in a large number of non-common law jurisdictions, in particular, will be able to take advantage for the first time of the transfer route to qualification as a solicitor.

We have some data on the backgrounds of lawyers who have applied to transfer to date. We do not have data on the lawyers who might wish to transfer if they were eligible to do so. As the QLTS is introduced, we will collect information about those who apply, so that we can identify whether applicants with particular backgrounds might be discouraged from applying and/or are finding the transfer scheme particularly difficult to complete.

Lawyers qualified in jurisdictions that are already included in the QLTR will continue to be able to access the transfer route, subject to confirmation that the relevant jurisdiction and qualification meets the general requirements set out elsewhere in this paper. Although the assessment requirements will be greater for many than is currently the case, we believe that the knowledge, skills and ability that will be assessed are essential for all who wish to practise as solicitors and that it is in the public interest to ensure that solicitors have such knowledge, skills and ability. We also believe that lawyers who qualify as solicitors by way of the QLTS will benefit from a qualification scheme that involves, and is seen to involve, a rigorous assessment of their competence to practise as solicitors.

We welcome your views on the equality impact of the proposals. This will help us to complete an initial equality impact assessment that will inform our final decisions on a new transfer scheme.

Question 20

What are your views on the possible equality and diversity impact of the new approach?

What happens next?

The consultation period will close on 6 February 2009, after which we will consider the responses and develop and refine the proposals appropriately. We will consider

whether, in the light of the responses received, it would be appropriate to consult further on any revised proposals and on draft regulations.

We will need to introduce new regulations for the QLTS. This requires us to gain approval in accordance with the requirements of the Courts and Legal Services Act. We cannot be certain how long the approval process will take, but we anticipate that we will not be able to introduce a new transfer scheme until the early months of 2010, at the earliest. In the meantime, applications will continue to be received under the provisions of the QLTR.

How to respond

To find out how to respond to this consultation, please visit our website.

- Go to www.consultations.sra.org.uk.
- Select **Qualified Lawyers Transfer Scheme**.
- Click **How to respond**.
- Alternatively, go to www.sra.org.uk/sra/consultations/1454.article#respond.

Submission deadline

The deadline for submission of responses is **6 February 2009**.