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10 September 2019

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This paper will be published

Delivering the Solicitors Qualifying Examination in Welsh

Purpose

- 1 The purpose of this paper is to propose a way forward on the delivery of the Solicitors Qualifying Examination (SQE) in Welsh.

Recommendations

- 2 The Board is asked to agree the following:
 - a) that we undertake a feasibility study and seek stakeholder views on giving candidates the option of writing their answers in Welsh from the introduction of the SQE (paragraphs 9 to 19)
 - b) that we explore the possibility of permitting candidates to take their oral skills assessments in English or in Welsh, subsequent to the introduction of the SQE (paragraphs 20 to 23)
 - c) that we seek stakeholder views on the emerging position that we do not at this time provide a Welsh version of the Functioning Legal Knowledge assessment questions, but that we should keep this decision under review (paragraph 24).

If you have any questions about this paper please contact: Julie Brannan, Director of Education and Training, Julie.brannan@sra.org.uk, 0121 329 6788.

Equality, Diversity and Inclusion considerations

Consideration	Paragraph nos
Consumers in Wales have the right to access legal services in Welsh so the provision of legal services in Welsh may make a positive contribution to access to those services. We are committed to supporting and increasing access to legal services and already provide practising certificates in Welsh on request.	Paragraphs 5 and 6
The introduction of SQE means that all aspiring solicitors will take the same examination regardless of route into the profession. This will help people choosing, for example 'earn as you learn' routes and may have a positive impact on diversity on the profession.	Para 9
It is important that SQE is fair to all candidates, so the standard of the examination must be consistent regardless of which language it is provided in.	Para 10

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<p>If we move to a feasibility study, we will also explore the emerging position with an inclusive range of stakeholders in Wales.</p>	<p>Para 25</p>
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Background

- 3 SQE candidates will be able to sit the examination in Wales, as well as in England and international locations. This paper proposes a programme of work to explore how best to meet the needs of candidates who want to take the SQE in Welsh.

Discussion

- 4 We are the regulator of solicitors and law firms in England and Wales, regulating some 3,900 solicitors (2.6% of those in practice) and around 440 law firms based in Wales – 4% percent of the total number we cover as at end of July 2019. We issue over 750 practising certificates a year in Welsh, and nearly 1,200 solicitors tell us that they speak Welsh.
- 5 England and Wales is a bi-lingual jurisdiction and access to legal services in consumers' language of choice is something we would wish to support and encourage. The availability of legal services through the medium of Welsh will depend on many factors outside our control (for example, the popularity and effectiveness of Welsh language teaching at primary and secondary school level; the availability of law courses in the medium of Welsh and the extent of demand by consumers for Welsh-speaking solicitors). Anecdotally we also know that many law firms provide services in Welsh and have considerable expertise in recruiting people with appropriate Welsh language skills.
- 6 Some stakeholders have suggested that giving candidates the opportunity to take the SQE in Welsh could also support the provision of bilingual legal services. Our regulatory model is committed to supporting and increasing access to legal services, and we want to do what we can to help increase access to legal services in Wales.
- 7 We are currently under no legal duty to offer the SQE or any element of it in Welsh, because we are not named in the relevant Welsh language legislation¹. However, "persons overseeing the regulation of a profession" fall within the category of bodies who could be brought within the scope of the legislation.
- 8 In addition, there is no current requirement in the legislation for those to whom it applies to provide assessments in Welsh. But students must be allowed to submit their answers in Welsh. The relevant standard says: "You must inform your students that any written work submitted to you as part of an assessment or examination may be submitted in Welsh, and that work submitted to you in

¹ Welsh Language Measure 2011

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Welsh will be treated no less favourably than written work submitted to you in English as part of that assessment or examination”.²

SRA position

- 9 Our requirements for the SQE are that it should be reliable, valid, fair, manageable and cost effective. We also hope that the SQE can contribute to the diversity of the profession by ensuring that all aspiring solicitors take the same examination regardless of the route taken.
- 10 We want to explore an approach for the delivery of the SQE in Welsh that ensures candidates are meeting the same standards as those taking the SQE in English, as a matter of public interest and protection and, of course, fairness to all the candidates.
- 11 We also want to deliver an effective process that does not add disproportionate cost for candidates, whether those in Wales or spread across the candidate population as whole, mindful that any cost increases will impact disproportionately on people from less affluent backgrounds.
- 12 It is currently unclear what the demand from candidates to take SQE in Welsh will be. There are only small numbers of training contracts in Wales. About 5,500 training contracts are available each year in England compared with about 150 - 170 in Wales. Three out of 29 Legal Practice Course (LPC) providers are based in Wales, and six out of 121 Qualifying Law Degree (QLD) providers. All Welsh universities are named in the Welsh language measure and therefore all QLD examinations are available in Welsh universities through the medium of Welsh. We have no information on how many students choose to take their examinations in Welsh. We are aware of one occasion when a student took one LPC skills assessment in Welsh.
- 13 It appears likely that the number of candidates sitting SQE in Welsh will be modest. This has two implications:
 - a) We will need to develop processes to quality assure the accuracy of the Welsh language version of the assessment and the comparability of standards between English and Welsh versions. This is critical for public protection and fairness for the profession as a whole. That will require testing our approach in practice.
 - b) To deliver the entirety of SQE in Welsh from its introduction will require a very significant investment and therefore impose a substantial cost on the candidates, without clarity about the potential uptake.

² Standard 90 of the N. 6 Regulations made under the Welsh Language Measure

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- 14 We are therefore proposing that we look at an incremental approach. This would allow us to understand the demand for SQE in Welsh in a measured way, while ensuring proper public protection and managing the cost for candidates.
- 15 We propose that we should explore giving SQE candidates the right to submit their written answers in Welsh, irrespective of whether we are subject to a legal duty to do so.
- 16 This would not affect the Functioning Legal Knowledge test of SQE 1, which takes the form of single best answer multiple choice questions. But it would affect the skills assessments in the SQE. As currently planned, all SQE 1 skills tests and 10 out of 14 of the individual tests in SQE 2 would involve written answers. We are proposing that candidates would have the right to submit answers for these written skills assessments in English or Welsh.
- 17 This would not require the question papers to be translated into Welsh, and so would avoid the risk of error or inconsistency between English and Welsh versions of the assessment. There would be some additional cost, but significantly less than that involved in translating questions. This would be a proportionate response given the likely level of demand for a Welsh version of the assessment.
- 18 We have discussed this approach with Kaplan. It has confirmed that it could accommodate it, subject to checking feasibility. For example, it would need to check that it could recruit enough bi-lingual markers, who were qualified solicitors with the full range of legal expertise covered by the SQE. It would also need to explore the effectiveness of quality assurance and other mechanisms to enable it to standardise performance sufficiently between Welsh and English candidates.
- 19 We therefore propose undertaking a feasibility study into this option. We will report back to the Board on its findings early next year, at which point we will be asking the Board to make a final decision on next steps.

Recommendation: the Board is asked to agree that we undertake a feasibility study and seek stakeholder views on giving candidates the option of writing their answers in Welsh from the introduction of the SQE.

Additional exploratory work post SQE go-live

- 20 The SQE includes oral skills assessments (in client interviewing and advocacy) as well as written skills assessments. The approach outlined above does not give candidates the opportunity to provide oral answers in Welsh.
- 21 The oral skills role plays will involve written case study materials, and question/answer interaction between client and candidate, or judge and candidate. Candidates may wish to refer to or quote from the case study materials during the role play. It may be, therefore, that for candidates to

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answer the oral skills assessments in Welsh, the question papers/case study materials would need to be translated into Welsh.

- 22 This would involve substantially more cost. It would require rigorous quality assurance processes for the translation, similar to those used by the Welsh Government for bi-lingual legislation.
- 23 Our emerging position is that the complexity involved in these processes means we would not wish to offer this option for the first live assessments. We would prefer to wait until SQE is up and running and routine processes are properly embedded. But we could use these early years of the SQE to explore the level of demand for the SQE in Welsh (through the take-up of the option to provide written answers in Welsh), to understand better how to adapt processes to include provision for translation into Welsh, and to explore cost-effective solutions. This information would help us to judge whether this would be a proportionate option.

Recommendation: the Board is asked to agree that we explore the possibility of permitting candidates to take their oral skills assessments in English or in Welsh, subsequent to the introduction of the SQE.

- 24 We have considered translating the questions in the Functioning Legal Knowledge assessment into Welsh. Our current position is that we do not think this is desirable. It would be very expensive, and it would be difficult to ensure exact equivalence between English and Welsh versions, given the degree of linguistic precision involved in this form of assessment. Given the expected low level of demand for the SQE in Welsh, and the significant cost of this option, we do not think this would be a proportionate response. However, we would keep this decision under review, particularly in the light of actual demand once SQE is introduced.

Recommendation: the Board is asked to agree that we seek stakeholder views on the emerging position that we do not at this time provide a Welsh version of the Functioning Legal Knowledge assessment questions, but that we should keep this decision under review.

Stakeholder engagement

- 25 We propose exploring our emerging position with relevant stakeholder groups: Welsh government and Welsh language organisations, representative law firms in Wales (including those who offer legal services in both English and Welsh), consumers of legal services in Wales and current law, and perhaps non-law students in both England and Wales. We will explore the likely level of candidate demand for some or all of the SQE in Welsh. We will report back to the Board on their views early next year, at the same time as we report on the outcome of Kaplan's feasibility study and will be asking the Board to make a formal decision on next steps.

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Supporting information

Links to the Corporate Strategy and/or Business Plan

- 26 The proposal to explore offering part of the SQE in Welsh relates to strategic objective 2: We will make sure our regulatory requirements are proportionate, providing solicitors and firms with the flexibility to innovate and better meet the needs of members of the public and businesses, while maintaining appropriate levels of public protection.

How the issues support the regulatory objectives and best regulatory practice

- 27 The proposal is proportionate and targeted. It supports access to bi-lingual legal services in a cost-effective way.

Public/Consumer impact

- 28 Our proposal supports consumers' right to choose legal services in the language of their choice (Welsh/English).

What engagement approach has been used to inform the work and what further communication and engagement is needed

- 29 We propose exploring our emerging position with relevant stakeholder groups: Welsh government and Welsh language organisations, representative law firms in Wales (including those who offer legal services in both English and Welsh), consumers of legal services in Wales and current law and non-law students in both England and Wales. We will explore likely candidate demand for some or all of the SQE in Welsh.

What equality and diversity considerations relate to this issue

- 30 The provision of legal services in Welsh may contribute to access to those services. We are committed to supporting and increasing access to legal services and already provide practising certificates in Welsh on request. The introduction of SQE means that all aspiring solicitors will take the same examination regardless of route into the profession. This will help people choosing, for example 'earn as you learn' routes and we hope it may have a positive impact on diversity on the profession³. It is important that SQE is fair to all candidates, so the standard of the examination must be consistent regardless of which language it is provided in. If we move to a feasibility study we will also explore the emerging position with an inclusive range of stakeholders in Wales.

³ [Introduction of the Solicitors Qualifying Examination: Monitoring and Maximising Diversity](#)

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How the work will be evaluated

- 31 We will monitor the demand for SQE in Welsh, and any quality assurance, operational and standardisation problems as part of the SQE evaluation programme.

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