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

Summary of responses

1. Introduction

The Qualified Lawyers Transfer Regulations (QLTR) were first introduced in 1990. The SRA is proposing to introduce a new scheme that enables qualified lawyers from within the UK, Europe and many other countries to qualify as solicitors in England and Wales by showing they meet the same standard as domestic applicants but without following the full domestic route**.**

The consultation paper and questionnaire were published on the SRA's website on 11 November 2008. The consultation closed on 6 February 2009.

The proposals in the consultation reflect:

- Changes to legal education and to the domestic route to qualification as a solicitor in England and Wales
- The establishment of the 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
- Obligations on EU member states to facilitate the free movement of individual citizens
- The Law Society's and SRA's experience of operating the QLTR since 1990.

The review of the scheme is being guided by five principles, as follows:

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

The proposed new scheme will replace the Qualified Lawyers Transfer Regulations 1990 and will be referred to as the Qualified Lawyers Transfer Scheme (QLTS).

2. The consultation exercise

Over 2000 stakeholders who have registered to be alerted to training consultations were emailed to notify them of the consultation. In addition, we sent emails to the recognised diversity groups inviting them to respond to the consultation. A presentation was made to the black and minority ethnic groups represented at Lord Ouseley's External Implementation Group on 2 June 2009 and meetings have been held with the Department of Business, Innovation and Skills and existing and potential assessment providers.

3. The responses

There were 39 responses to the consultation. The respondents included the Law Society of England and Wales, the Law Society of Scotland, Law Society of Northern Ireland, the Law Society of Ireland, the Law Council of Australia, local law societies, the Legal Services Commission, the Junior Lawyers Division, training organisations and a range of firms and individuals. A list of those who responded (and are identifiable) is at **Annex A**.

Although the number of responses was relatively small, a number of respondents represent a large number of solicitors and firms, for example, the Law Society and the City of London Law Society.

4. Key findings and future actions

The vast majority of respondents agreed with the SRA's proposals. However in response to the issues raised, and following further research, we have decided to make the following amendments to the proposals:

- We have amended the criteria for determining 'recognised jurisdictions' (see response to questions 5 and 6 below)
- We have decided to assess the skills outcomes which were to be assessed in a structured interview through the suite of practical assessment
- We have decided to introduce a standalone English language test for all QLTS applicants which must be passed before any of the other assessments can be attempted.

The key dates for the project are now as follows:

September 2009	Proposals approved by SRA Board
November/December 2009	New regulations to be approved by SRA Board
January 2010	New regulations submitted to LSB for approval
September 2010	Implementation date (subject to approval by the LSB by that date)
January 2011	New QLTS assessments available

5. Summary of responses and SRA response

Q1 Should the SRA use the Day One Outcomes as the benchmark against which transferees should be assessed?

We proposed that the benchmark against which transferees should be assessed is the same benchmark which applies to individuals who qualify under the domestic route, namely, 'The Day One Outcomes'. Some aspects of the Day One Outcomes can be assumed of all lawyers (i.e. intellectual, analytical and problem-solving skills, and personal development and work management skills) and it is not currently proposed that we will assess these under the QLTS. The other areas of the Day One Outcomes will be assessed through the proposed suite of assessments and will form the blueprint of assessment standards for the QLTS.

There was overall support for the proposal that the Day One Outcomes should be used as the benchmark against which transferees should be assessed.

> "We stress the importance of ensuring that the assessments set a standard consistent with those which apply to domestic entrants to the profession" (The Law Society)

However the following concerns were raised.

> "It would be a pity if the outcome [of the review] was one where the requirements to become a solicitor were regarded as more satisfactory but that as a result far fewer persons became solicitors but decided instead to become registered foreign lawyers or registered European lawyers thereby not doing any particular training in English law and practice other than that imposed by their firms." (CLLS)
>
> One firm suggested that the SRA should introduce a limited qualification for those international lawyers working in major commercial firms.

SRA response

The purpose of the SRA is to ensure that clients obtain good quality legal services from solicitors and the firms in which they practise. To achieve this we set high standards for admission into the profession (whether through the transfer route or the domestic route) and ensure that these standards are properly assessed.

The standard expected of solicitors on admission has been updated since the QLTR was established in 1990. The new standard is expressed in the Day One Outcomes. Therefore, our proposal enables parity between the qualified lawyer route and the domestic route.

We will monitor whether the reform of the QLTR gives rise to an increase in the number of RELs/RFLs. However we anticipate that the unrestricted practice rights and the enhanced reputation which come with admission as a solicitor of England and Wales will mean that the QLTS route remains attractive to many[1].

The SRA Board remains committed to the principle of a generic solicitor qualification which does not allow for admission to practise only in some areas of law. The current regulatory system, which has only recently been reviewed by Parliament during the passage of the Legal Services Act, is structured on this basis and the ramifications of making such a change are beyond the scope of this review.

We propose, therefore, to develop the QLTS on the basis of the Day One Outcomes, as proposed in the consultation paper and will monitor the impact of the new requirements.

[1] See Annex 1 to the equality impact assessment

Q2 Should transferees be required to demonstrate the knowledge and skills set out in the consultation paper (pp. 8-9) under the heading "Common standards of knowledge, skills and ability"?

We proposed that all transferees should be required to demonstrate that they have 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:

- 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 proposed 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
- Professional values, behaviours, attitudes and ethics

There was agreement amongst respondents to the consultation that transferees should be required to demonstrate the knowledge and skills set out in the consultation paper.

The Law Society supported the proposal with the caveat: "we need to be assured of the integrity of the assessment process."

SRA response

On the basis that there is substantial evidence across jurisdictions that the core role of a lawyer requires similar skills, we propose that transferees should be required to demonstrate the Day One Outcomes and that the outcomes detailed above (i.e. intellectual, analytical and problem-solving skills, and personal development and

work management skills) will not be retested through the QLTS. This will however be reviewed as the specific QLTS outcomes are further developed.

Q3 Do you have comments on our approach to assessing the character and suitability of transfer applicants?

We proposed in the consultation paper that we would need to be confident that the conduct in practice of QLTS applicants is in line with the conduct we would expect of a solicitor.

We proposed that the following checks will be put in place:

- references from people who can comment objectively on an applicant's standing
- certificates of good standing from the applicant's home professional/regulatory body
- disclosure from UK's Criminal Records Bureau (CRB)
- where possible and appropriate, disclosure from CRB equivalent bodies in other jurisdictions

Whilst the standard required in terms of character and suitability will be the same for all QLTS applicants, we will vary the nature of evidence required according to where an applicant lives and works and the availability of independent evidence of their character and suitability.

A number of respondents emphasised the complexities of international character and suitability requirements. Some concerns were raised about the potential financial costs of character and suitability checks.

"Overall, we feel that this is a sound principle, in keeping with the domestic route to qualification. We agree that it is appropriate to take account of jurisdictional variations in the nature of the evidence required, but the SRA needs to ensure that there is consistency and transparency in how these variations are applied." (The Law Society)

"We feel that discretion would be necessary with the outcome of CRB or similar checks, especially where the offence wouldn't be classed as a criminal offence in the UK". (Anon.)

"Some direct contact via established channels would also reduce the risk of forgery, or impersonation, which is a distinct possibility within the current system." (QLTT applicant)

SRA response

This is a complex area and one which is linked to the wider work of the SRA. Character and suitability checks are carried out in relation to every individual applying for a certificate of eligibility to sit the QLTT, student enrolment or to be admitted to the roll. This is an important stage which enables the SRA to verify whether the candidate is of the requisite character and suitability, and therefore, whether it is in the public interest for the applicant to move on to the next stage.

The issue of character and suitability is fundamental to the success of the new QLTS. Further work in this area is being carried out within the SRA and we propose that the concerns raised here will be fed into this development work to ensure that a robust process is in place. In relation to the assessments themselves, we will ensure that measures are put in place to ensure the security of assessments, for example, to minimise the risk of impersonation.

Q4 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?

We proposed that, in order to be eligible to apply for the QLTS, applicants must be entitled to practise and have followed the full route to qualification, in the jurisdiction on which they are basing their application. There are some exceptions for EEA lawyers.

Respondents agreed with the proposal that only applicants who were entitled to practise under their initial professional title should be eligible to transfer.

"there is no objection to BVC graduates being ineligible to take the Qualified Lawyers Transfer Test (QLTT). They are not 'Qualified Lawyers'." (Bar Standards Board Education & Training Committee)

"There should not be a blanket ban on requalifying on the basis of a second professional qualification that was obtained under a transfer scheme. In certain cases, most likely where the applicant has practised for some time in that second jurisdiction, it is the more appropriate qualification to consider." (Anon)

"Excluding barristers who have not completed their pupillage may also have a disproportionate impact on BME and disabled barristers who may struggle to obtain pupillage." (Anon)

A number of respondents supported the provision of transitional arrangements for those barristers who had not completed pupillage.

SRA response

Respondents, including the Bar Standards Board, agreed that applicants should not be able to apply via the 'Qualified Lawyer' route unless they are entitled to practise under their initial qualification. The SRA believes that it would not be consistent with the domestic route to allow applicants to apply who are not entitled to practise under a full practising certificate (or the equivalent in the relevant jurisdiction).

We propose, therefore, that only those who are entitled to practise and who have followed the full route to qualification in the jurisdiction on which they are basing their application will be eligible to apply under the QLTS. Those basing their application on a second qualification which was obtained because their first qualification allowed them to qualify under a transfer scheme, will not be eligible to apply. This is to ensure that our standards are met in full and that it is not possible for applicants to circumvent the recognised jurisdiction approach.

We note the issues raised about transfer arrangements for Bar Vocational Course (BVC) graduates and the potential for discrimination. This is dealt with in the equality impact assessment.

Q5 Should the transfer scheme be open to lawyers from a potentially wider range of jurisdictions than is currently the case?

and

Q6 Do you agree with the characteristics we propose would be demonstrated by the professions who will be able to access the new transfer scheme?

The proposal on which we consulted was that the criteria for assessing similarity with England and Wales should be:

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

- a professional qualification which requires completion of specific education and training at a level that is at least equivalent to that of an English/Welsh honours degree

- a system whereby 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

- a system whereby members of the profession are subject to disciplinary sanctions for breach of their ethical code, including the removal of the right to practise

We also proposed that there should be no provision to make a special case for those individuals qualified in jurisdictions that do not satisfy the criteria for inclusion. There will, however, be a mechanism in place to review decisions as to whether or not a jurisdiction satisfies the requirements.

Although respondents agreed that QLTS should be open to lawyers from a wider range of jurisdictions, views were split on the proposed jurisdictional characteristics:

"The assessment process must never make assumptions based on the applicant's original qualification or qualifying jurisdiction. The jurisdiction issue should solely be about determining who is eligible to go through the transfer process. It should not be used as a tool for setting standards." (The Law Society)

"The transfer process relies on evidence of a candidate's good standing from their home professional body and it is important that the integrity of that body has been investigated. The obvious way to do this is through a 'recognised' jurisdictions approach." (OXILP)

"We favour looking at the individual applicant rather than the jurisdiction from which he or she comes and then relying on a rigorous assessment regime to maintain standards." (Clifford Chance)

"The criterion requiring independence from government could be resolved by a robust ethics test. Similarly, we question how requiring a lawyer to come from a jurisdiction that includes disciplinary sanctions for breach of their ethical code proves their competence to practise." (The Law Society)

"The jurisdiction in which an applicant happens to have qualified obviously has no bearing on his or her intellectual capability to become an excellent lawyer. In contrast, the nature of the training and/or practical experience of the applicant in his or her home jurisdiction might have an 'attitudinal' effect on him or her. However, there is no reason to believe that an applicant from an 'unrecognised' jurisdiction will not, as a consequence, possess the right 'attitudes' to become a very effective solicitor. To apply a blanket exclusion to such individuals is unfair." (Clifford Chance)

"If other jurisdictions (for example, New York) are seen as being more open, entrants who would have qualified in England and Wales may go to New York. Ultimately, that could enhance New York law as the international law of choice rather than that of this country to the considerable detriment of the UK economy." (Clifford Chance)

"In the case of Allen & Overy, the supervision and support that we offer would certainly more than compensate for any concerns regarding certain professions. Alternatively, where professions are not 'recognised', applicants from these professions could do an additional exam or undertake a period of work experience to make up for the deficiencies that the SRA perceived there to be in their original jurisdiction." (Allen & Overy)

However, one firm did not think the range of jurisdictions should be increased and thought that all applicants from non-common law jurisdictions should qualify via the domestic route.

On the right to appeal one person commented: "With anything other than the 'no restrictions on jurisdictions' approach, individuals should have a right of appeal." (Anon)

SRA response

We believe that our regulatory objectives are best served through the provision of a fast track to qualification which is only accessible to regulated lawyers with a professional role broadly similar to that of a solicitor of England and Wales. The criteria are an initial filter to ensure that only those applicants from jurisdictions sufficiently similar to that of England and Wales can apply. The criteria justify giving those applicants who come from jurisdictions who meet the criteria a fast-track route to qualification.

A number of respondents were critical of the criteria proposed for the 'recognised jurisdiction' approach, particularly the independence from government criterion. In response to these concerns, we have decided to remove this criterion as we consider that it is more objectively determined via the remaining criteria.

We have also decided to replace the requirement for the jurisdiction to have a qualification regime which requires an honours degree or equivalent, with a requirement for a Bachelor's degree or equivalent. This is partly to reflect the fact that 'honours' is not an internationally recognised term and partly to ensure parity with the domestic route where a Qualifying Law Degree need not be 'honours' level.

We have investigated other possible ways of selecting jurisdictions for inclusion in the scheme, for example, permitting all WTO countries to apply. However, the fact that a country is a member of the WTO does not tell us anything about its legal or regulatory system. Consequently, it does not tell us whether the jurisdiction is sufficiently similar to that of a solicitor of England and Wales to justify a fast-track to qualification. This alternative has, therefore, been rejected.

A few respondents suggested that the recognised jurisdiction approach could be discriminatory. However, a restriction on the jurisdictions which can apply under the scheme cannot be directly discriminatory (because one's jurisdiction is not synonymous with one's race). It could be indirectly discriminatory were it not justified. We are satisfied that the 'recognised jurisdiction' approach is an appropriate filter and is justifiable because it allows the SRA to filter out candidates who are not qualified in a jurisdiction which is sufficiently similar to England and Wales, to justify the candidate gaining a fast-track route to qualification. If an applicant comes from a jurisdiction which does not meet the criteria, they can ask the SRA to reconsider its information in relation to the jurisdiction, but in any event could seek admission via the domestic route.

The issue of competitiveness with other legal centres is something that we are mindful of. However, this objective must be balanced against the need to protect the public interest and the interests of consumers. Therefore, the primary concern for the SRA as a regulator in developing this fast track to qualification is to ensure appropriately high standards on qualification so that consumers of legal services can be assured that all solicitors who have qualified via the QLTS have been assessed as competent.

Some respondents suggested that additional supervision requirements could be put in place for individuals who came from jurisdictions which did not meet the criteria. However, given the policy position of maintaining a generic qualification, we must assure competence on admission, and if there are any question marks over whether an individual should be permitted to practise as a solicitor of England and Wales, these issues must be resolved pre- rather than post- qualification. Supervision

requirements would, in themselves, be a return to a work experience requirement, which is something we have decided to move away from for the reasons set out in response to Question 10 below.

We will put in place a procedure for reviewing jurisdictions to allow for equality of opportunity within our criteria. After careful consideration, we consider that to allow an individual a right of appeal in relation to their jurisdiction would be opening the scheme up to a level of subjectivity which it was set up to minimise. It has, therefore, been decided to put in place a mechanism to review the jurisdictions which are recognised, rather than have in place a procedure which allows the specific circumstances of individual applicants to be assessed.

In summary, therefore, we believe that our regulatory objectives are best served through the provision of a fast track to qualification which is only accessible to regulated lawyers with a professional role broadly similar to that of a solicitor. The criteria that we will use to assess this are:

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

A mechanism will be put in place to review the jurisdictions which are recognised but we will not allow an individual a right of appeal in relation to their jurisdiction.

Q7 Should we phase the way in which we bring new jurisdictions into the transfer scheme in response to demand?

We proposed phasing in the recognised jurisdiction approach in response to demand. Mechanisms for gathering and considering the evidence will be put in place and made public. Decisions will be evidence-based and transparent. The process will be ongoing and provide for reviews.

There was support amongst consultation respondents for a phased approach.

"There seems little alternative to some form of phasing, given the amount of work involved. However, this raises the question of demand from whom and how demand is measured. …Would it be based on historical data about the jurisdictions from which transferees most commonly come? In this case, it is possible that the numbers reflect the relative ease of transfer for some jurisdictions under the QLTR. Care needs to be applied here to avoid discrimination.

It might be more sensible for the SRA to develop its own timetable for the phasing in of new jurisdictions, based on some objective criteria, such as the size of the new jurisdiction." (OXILP)

However, the Law Society of Scotland felt that the scheme should be open to all jurisdictions from the outset.

SRA response

We propose phasing the way in which we bring jurisdictions into the transfer scheme as proposed in the consultation paper. We will ensure that the criteria for phasing jurisdictions are clear and transparent and based on a clear justification. This issue is considered further in the equality impact assessment.

Q8 Should the International Lawyers' Assessment cover the range of knowledge, skills and ability set out in the consultation paper (pp. 17–18)?

We proposed that the international lawyers assessment should be in three parts:

- written assessments
- practical or clinical assessments
- a structured interview

The written assessments would cover the knowledge set out in set out in the response to Question 2 above, the practical assessments would test transactional and dispute resolution skills, legal, professional and client relationship knowledge and skills and the structured interview would test professional values, behaviours, attitudes and ethics (but see response to Q9 and Q10 below). Again, these assessments would be set at a level equivalent to that expected of solicitors on admission and designed to ensure that only those with relevant work experience will be able to pass (see response to Question 9 and 10).

It was not proposed that international lawyers will be able to apply for exemptions from any element of the assessments as to do so would make the scheme less consistent and transparent and undermine parity with the domestic route.

A number of respondents raised concerns about the additional burden in terms of cost and time of undertaking the international assessments.

The Law Society supports the content but is "concerned about the nature, volume, and likely cost of the proposed assessment regime. …The increase in the volume of the assessments will also require more commitment from employers, particularly in terms of granting leave to employees who are participating in the scheme."

"Maintaining professional standards seems to me to be more of an ongoing compliance issue rather than a competence which can be tested once and then forgotten. It is one thing to know the rules – quite another to remember them and apply them in practice." (QLTT applicant)

Concerns were raised about whether values and ethics could be tested in a structured interview.

"Neither practical nor clinical assessments appear to represent a viable or meaningful option, particularly given our view that, in order to be eligible to sit the QLTS, a lawyer must have the right to practise under their home title and have completed the full domestic route to qualification in that jurisdiction." (BPP)

"… we have concerns that insisting that someone must sit a test irrespective of their existing knowledge and experience (i.e. not granting any exemptions to anyone) is disproportionate in both cost and time/effort terms, and will serve to discourage potential applicants who would in fact be well suited to practising as a solicitor." (Anon)

"Surely those who have passed and completed GDL/CPE are eligible to apply for specific/individual exemptions from the new QLTS assessments. I agree that all international lawyers need to be required to pass the practical or clinical assessment and the structured interview assessment. There should not be an exemption on these two parts of assessments." (Chinese lawyer)

"We believe that the same regulatory framework should apply to all transferees. To fail to do this is discriminatory. It should be open to transferees from all jurisdictions to be able to demonstrate that they meet the SRA requirements through prior qualifications." (OXILP)

Some respondents put forward arguments for exemptions to be permitted:

SRA response

We appreciate that the new QLTS will involve a greater commitment from some applicants in terms of time and cost than the current QLTT. However, we strongly believe that the proposed system of assessments is necessary to ensure that all

applicants for admission to the roll are competent and are of an equivalent standard to those entering via the domestic route.

One of the responses questioned whether it was appropriate to test conduct in the QLTS assessments. The maintenance of professional standards is an ongoing process and one which solicitors are obliged to comply with throughout their practising career. However, what is being assessed in the QLTS is an applicant's suitability for admission as a solicitor of England and Wales, and just as rules and ethics are assessed pre-qualification for domestic applicants, they must also be assessed for transferees. The assessment of an applicant's knowledge and application of the Solicitors' Code of Conduct is particularly important for transferees as they will not necessarily have had the benefit of several years of teaching of this ethical framework.

It was suggested that there should not be any practical assessments because skills and application of knowledge could be assumed of applicants who had already qualified in their home jurisdiction. However, a comparative analysis of other jurisdictions has shown that there is no consistency of approach to qualification and experience requirements, and we cannot, therefore, make any assumptions about the practical experience of an applicant.

A number of respondents suggested that we should individually assess each applicant's prior experience and award exemptions from the various assessments where this was deemed appropriate, as we are required to do with EEA applicants. We considered this issue carefully, and have decided not to follow this course of action for a number of reasons:

- One of the core principles of the QLTR review was to develop a scheme which assessed applicants against the same high standards of knowledge, skills and abilities as required of those who follow the domestic route to qualification. If we individually assess the qualifications of all international applicants, this would reduce the rigour of the scheme. Inevitably, when making any comparison of international qualifications there is an element of subjectivity. However the SRA needs to be able to reach an objective judgement as to whether the international qualification is sufficiently similar to the domestic qualifications and this is best achieved through an all-encompassing assessment scheme.
- It is the SRA's aim to bring in a robust scheme that serves our regulatory objectives and is as fair as possible to all applicants. Therefore, although we are obliged to individually assess EEA applicants' prior qualifications and experience, we will not be carrying out this assessment for all applicants (but see our response to Q13 below). It should also be noted that, although EEA applicants are individually assessed under the current system, it is commonly the case that they are required to take all the assessments as their legal systems are very different to that of England and Wales. It is not the case, therefore, that they generally have an easier route to qualification by virtue of being individually assessed. (Further details of this issue can be found in the equality impact assessment).

We propose, therefore, that the QLTS will be fairer and more robust if all international applicants are required to undertake the same suite of assessments, regardless of their prior qualifications and/or experience.

Q9 Should we assess transferees' ability to act appropriately in situations simulating practice and assess their understanding of law in practice in England and Wales?

and

Q10 Should international lawyers be required to undertake work based learning in English/Welsh law as part of the transfer requirements?

We proposed that transferees ability to act appropriately in situations simulating practice and their understanding of law in practice should be assessed through a series of practical assessments. We did not propose to require any applicants to complete a period of work based learning. However, we suggested that those who have not had any practical experience of working in a law firm in England and Wales will find it difficult to pass the assessments (see response to Q8).

Some respondents were in favour of transferees being assessed in situations which simulated practice and which assessed their understanding of law in practice in England and Wales.

The Law Society supports the need to assess transferees' practical skills and understanding of law and legal practice in England and Wales. However they are "concerned that the structured interview may be perceived as subjective and discriminatory. Cultural differences in expressions, mannerisms or language could be interpreted by interviewers as incompetence or as a lack of skill or ability."

Concerns were raised about the ability of the SRA to monitor the consistency of approach taken by interviewers worldwide.

The Law Society was strongly in favour of an experience requirement "…we do not accept that all of the Day One Outcomes can be assessed in the absence of an 'experience requirement'. There are Outcomes, currently linked to the work based learning phase, which require an experience of working with clients, working in an office environment and managing a work load, which cannot be assessed through simulation but must none-the-less be reliably confirmed." (The Law Society)

"If the SRA does not accept the need for an experience requirement we do not see how it could continue to prescribe the need for all domestic entrants to complete a vocational training course and two years of 'experience requirement' once it has in place, through the QLTS, a suite of assessments to assess all the Day One Outcomes which is free from any prescription as to process." (The Law Society)

"Yes, to ensure parity with the domestic route to qualification, but only where a transferee cannot demonstrate that they have met the requirements through prior qualification." (OXILP)

"…we remain concerned that transferees might be able to gain qualification without any actual practical experience in England and Wales and wonder whether consideration should be given to the development of a restricted right to practise for a period (or right to practise subject to quarterly supervision visits from an independent third party – as happens with newly admitted notaries public in England and Wales) in order to mitigate the regulatory risk these transferees might pose." (Anon)

The Law Society of Scotland thought that the assessments should assess the knowledge and skills required and that there should be no need for a work based learning requirement.

"I think that foreign lawyers in need of a period of local experience could be given some official status as such, and could be authorised to undertake some types of work usually performed by a fully qualified English solicitor, provided they do so under the supervision of a qualified English solicitor." (QLTT applicant)

"We do not believe that a period of work-based learning should be a requirement for all transferring lawyers" however depending on the level of experience it might be a more suitable method of assessment than some of the assessments (Allen & Overy)

"It will be difficult to evaluate the experience. The exam should be sufficiently rigorous not to need an experience requirement." (Anon)

Some respondents to the consultation suggested that the structured interview might be perceived to be subjective and therefore open to challenge.

SRA response

Although there will not be a specific experience requirement, we will expect applicants to have gained experience in England and Wales before they attempt the assessments. We will make it clear to applicants that they risk wasting time and money on the assessments if they have not gained appropriate experience beforehand.

We do not propose to require any specific experience requirement for the following reasons:

- Experience does not guarantee competence
- Supervised experience plus assessment was considered but was deemed to be disproportionate for those who have qualified elsewhere, and would not provide a fast-track route
- Practical assessments will be significantly harder to pass if a candidate has not had relevant practical experience
- It is difficult to objectively assess or verify the quality of experience unless it has been gained in a controlled and monitored environment such as the training contract and in particular the degree of supervision and oversight provided
- It may be hard for a transferee to get good quality experience in English law
- Transferees have had very different types and lengths of experience and with an increase in the eligible jurisdictions, it will be increasingly difficult to make comparisons

The Law Society in particular was strongly in favour of the retention of an experience requirement. Whilst we understand the issues raised, we believe that the skills and practical application of knowledge required on admission (as set out in the Day One Outcomes) can be better assessed through assessment in the case of qualified lawyers from other jurisdictions. The QLTS is, by definition, dealing with applicants who have come from an enormous variety of routes and we cannot begin to assess each of these routes and come to any robust conclusion about their comparability with the domestic route. The domestic route involving a training contract period of

normally 2 years (or for some a period of work based learning) is still the SRA's most common qualification route.

Some respondents suggested that the SRA should restrict the practising rights of applicants who had not had any practical experience. However, once a solicitor is admitted, we make no distinction between solicitors who have qualified through differing routes. It is in the public interest, therefore, to ensure that each applicant is suitable to become a solicitor of England and Wales at the point of admission.

We have listened to the concerns raised about the structured interview and have examined practices employed by other regulators. We have also met directly with assessment providers. We have concluded that there is a more robust and objective means of assessing the outcomes which were to be assessed in the structured interview. This is set out below.

We intend to assess their learning from experience, professional values, behaviours, attitudes and ethics through practical assessments. We have considered the assessments used by other comparable regulators and are satisfied that this is a robust and workable course of action. In particular, we have been investigating the Objective Structured Clinical Assessments (OSCEs) used by the GMC, GDC and RCVS. Further work will be carried out to develop the assessment methods and test their reliability but our evidence to date demonstrates that practical assessments can act as a proxy for experience and will be a much more effective means of assessing competence than the current experience requirement in the context of individually qualified lawyers.

In summary, we will not place any specific experience requirements on QLTS applicants but we will assess their learning from experience through the suite of practical assessments. We no longer propose to require applicants to undertake a structured interview and will assess their professional values, behaviours, attitudes and ethics through the practical assessments.

Q11 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?

We proposed that 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.

Respondents were in favour of some form of testing of the transferee's command of the English language, however some did not feel that a separate language test was necessary.

SRA response

We have conducted some benchmarking research to assess what other regulators do in these circumstances. The General Medical Council, Royal College of Veterinary Surgeons and General Dental Council all require International English

Language Testing System (IELTS) assessments to be passed (see Annex 2 of the equality impact assessment). The surveyors and accountants do not have a language requirement but the surveyors have routes to admission which are structured on their international reach, for example, they approve degrees around the world.

Of particular interest has been the example of the RCVS. For some years they did not require a specific test of English to be passed. However, they found there was a direct correlation between those with poor English and those who failed the assessments. They have now introduced an IELTS requirement as a pre-requisite to sitting the formal transfer assessments. This has had the dual effect of preventing applicants from wasting money by sitting the costly formal assessments, when their standard of English means that they have little change of passing, and it has enabled those marking the assessments to be able to concentrate on the technical knowledge and application of that knowledge, although English language is still tested as part of the assessment.

It is in the public interest for the SRA to ensure that providers of legal services are able to communicate with their clients in English and act in their client's best interests. Domestic candidates are tested on their use of their English language throughout the pre-qualification period. Students on qualifying law degrees are expected to be able to "use the English language and legal terminology with care and accuracy"[2]. The Training Regulations, which set out the requirements for admission as a solicitor of England and Wales, state that an applicant will not be permitted to start the LPC unless the SRA is satisfied that they have a good knowledge of spoken and written English[3]. Finally, at the end of Stage 1 of the LPC[4], candidates are expected to:

- be familiar with methods of communication and able to choose and tailor the communication form and style to suit the purpose of the communication and needs of different recipients
- be able to communicate orally and in writing and draft and amend documents in a form, style and tone appropriate for the recipients and the context

The LPC Outcomes also detail the type of research and written exercises which is to be expected at that level.

Domestic candidates have their English language proficiency continually tested to a high standard. We propose, therefore, to require most QLTS applicants to pass a stand alone English language test before they are eligible to undertake any of the other assessments. This requirement will ensure parity with the domestic route which tests applicants over a number of years. Specific exemptions will be considered as the development of the scheme progresses and this requirement will not apply to those seeking to transfer under the EU Directives.

[2] Learning Outcomes Schedule 1(b)(vi).
[3] Training Regulations 2009, Regulation 5.1(ii).
[4] LPC Outcomes 2007

Q12 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?

We proposed that we will undertake an individual assessment of the prior qualifications and experience of European lawyers in order to determine which assessments they should take under the QLTS. This is in accordance with our obligations under Directive 2005/36/EC. The Day One Outcomes will be used as the benchmark for the assessment and the aptitude test that European lawyers will be required to undertake will be compiled of appropriate elements of the written and practical assessments that form the International lawyers' assessment.

> "We consider that one uniform standard should be applied to assess EU lawyers, rather than the latter being assessed on an individual basis." (Anon)
>
> "Our key point here is that there can be no justification for treating International lawyers differently to European lawyers, and that to do so is discriminatory." (OXILP)

SRA response

A number of consultees felt that the SRA should undertake individual assessments of the qualifications and experience of non-EEA as well as EEA lawyers. We have explained the reasons for not doing this in our response to Question 8. In summary:

- We would, in principle, require EEA candidates to undertake all of the same assessments as international candidates but we are unable to do so by law. The fact that we are unable to do this, does not negate the public interest arguments for requiring this of international applicants.
- The reason why we would, in principle, wish all applicants to go through the same assessment system is to better fulfil our regulatory obligations to help ensure that all applicants have met the requisite standard for admission, i.e. the Day One Outcomes. The greater the number of transferees who have taken alternative routes which cannot be closely assessed and monitored, the greater the likelihood that someone is admitted who has not met the Day One Outcomes.
- In reality, given that most EEA countries are not based on common law, most EEA applicants will need to take most, if not all, of the assessments that international applicants will be required to take In practice, therefore, there may be very little difference between the two routes.

This issue is also dealt with in the equality impact assessment.

Q13 Do you agree with the proposed assessment requirements for UK lawyers (see p. 20)

We proposed that UK lawyers would need to pass all the assessments (written, practical and structured interview) except contract and tort and the English legal system (equitable rights, human rights and EU law).

Respondents felt that the assessment requirements were too onerous:

> "The current proposals risk being criticized for being overtly protectionist." (Law Society of Northern Ireland)
>
> "We also find it difficult to justify that an EU lawyer may find it easier to qualify as a solicitor than a barrister qualified in England and Wales, even though the barrister's prior qualifications and experience will be likely to be far closer to those of an English solicitor than those of an EU lawyer." (OXILP)
>
> "…we would advocate a more tailored diet of exams for lawyers with the different UK qualifications." (Clifford Chance)

SRA response

We have considered the views put forward in response to the consultation and in order to have as coherent a framework as possible, have decided to treat intra-UK transferees in the same way as EEA candidates. This is for the following reasons:

- It will enable the SRA to recognise the particular similarities in the law and legal system which intra-UK qualified lawyers have with domestic applicants and respond to these similarities in a proportionate way. Specifically, the homogeneity of a substantial part of domestic legislation and the fact that the higher court structure (i.e. the Supreme Court) extends to Northern Ireland and Scotland.
- It will streamline the QLTS and provide for two rather than three methods of achieving the necessary outcomes

As with the EEA countries, we will carry out further research to develop an appropriate benchmark for intra-UK transferees which will enable us to assess applicants from these jurisdictions. We will publish our approach once it has been agreed.

Q14 Should UK qualified lawyers be required to complete any specific experience before being admitted as solicitors?

We did not propose that UK transferees (or any other transferees) should be required to complete any specific work experience.

"If they are acceptable and fully qualified as solicitors in Northern Ireland or Scotland they should be acceptable in England and Wales without further work experience." (Anon)

"Provided that the transferees need no further education, training or assessment to practise in their own jurisdiction we are happy for there not to be an additional experience requirement." (OXILP)

SRA response

Our proposal for no experience requirement for UK lawyers was supported in the consultation exercise. UK lawyers will need to be entitled to practise under their existing title in order to be eligible for the QLTS.

Q15 Should the SRA work with just one organisation to develop and deliver the transfer assessments?

We proposed that there should be only one assessment provider of the new QLTS assessments.

Respondents were in favour of one organisation, although they did not explain why

Those who were against the proposal tended to provide further explanation.

"Provided an adequate quality assurance procedure is undertaken for international providers, there is no reason why the use of multiple providers for the QLTS assessment could not work as well as it has in the domestic route, but tighter control must be exerted than in the current system." (The Law Society)

"A sole provider having to make all the investment into this scheme will have to balance the costs of that against the assessments, it will not necessarily be cheaper for candidates if there is one provider. Competition does help keep costs down." (Anon)

"This proposal is not in line with higher education generally or indeed the GDL or LPC.

"Competition between providers has afforded candidates a considerable amount of choice and convenience as to when to sit the assessments. …choice would be reduced under these proposals. The effects of [this] would be discriminatory, as they would drastically reduce candidates' choice." (OXILP)

"It is difficult to see why the SRA wishes to introduce a system which is different to that operated by LPC providers and which has worked well to improve standards of professional training in the domestic route." (OXILP)

"Having a single test provider provides no incentive to respond to changing technologies, to offer the best price or the best service." (OXILP)

SRA response

We have considered the issues raised in the consultation exercise and have met directly with assessment organisations. We are still of the view that the best way forward is to appoint only one assessment body, and that that body will not be permitted to provide training for the QLTS. The reasons for retaining this position are:

- 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 new style assessments
- Efficiencies of scale should be able to be passed on to candidates
- Contracting with one provider would enable us to take the level of the fees into account when considered tender submissions
- One assessment body would provide the most appropriate framework within which a new assessment methodology can be developed and standards set and maintained.
- We will be able to quality assure the provision of assessments more carefully if there is one provider. This will enable us to be proactive in carrying out our duties under the equalities legislation.

Although numerous providers are permitted for the LPC and GDL, the QLTS is a distinct form of assessment and will require significant start-up investment from the provider. Furthermore, the numbers likely to be seeking to take the QLTS assessments will clearly be lower than for the LPC or GDL. We are in the process of developing a Common Framework which will ensure that there is a common set of monitoring requirements across the board for all assessment providers. This Framework will be applied to the QLTS and should provide added assurance in relation to the monitoring of assessments.

We propose to review the arrangements after 3 years of operation.

Q16 Should a sole assessment provider be prohibited from also providing courses to prepare for the assessments?

We proposed that the sole assessment provider should not be permitted to provide courses to prepare for the assessments.

Respondents thought that a sole assessment provider should be prohibited from providing courses.

> "It is possible to provide assessments and training without impairing the integrity of the tests. …It should be noted that all of the academic institutions offer qualifications which are based on study and examinations provided by one institution. The two elements go together and provide a solid platform of study supported by assessment of skills and knowledge." (Anon)
>
> "Yes, to ensure that all course providers are on a level playing field." (OXILP)

SRA response

We propose that the sole assessment body should not be able to provide QLTS training courses. This is to help ensure the integrity of the scheme and to prevent the single provider from having any undue advantage.

Q17 What are your views on making the assessments available outside the UK?

We did not express a view as to whether assessments should be available in other countries or not. We observed that, if assessments took place in other countries, safeguards would need to be put in place to assure the integrity of the assessments.

Respondents were in favour of assessments being available outside the UK.

"Assuming that there is a robust quality assurance procedure in place, the Law Society believes that it is important to ensure that the new assessment procedure is available outside of the UK….Removing the structured interview component would enable the new assessments to be more easily offered outside the UK."

"To run the 'live' assessments would be very expensive if assessors have to be flown in and accommodated during the assessment period. Further, given the 'suitability' interview, it is difficult to envisage how this could be undertaken in overseas locations." (Anon)

"This is important , in order to attract candidates in an increasingly globalised legal world, to maintain candidates' choice and accessibility to the Tests, and thus to avoid discrimination.

That suitable candidates should be attracted to take the assessments is an important element in the general strategy of making English law and the jurisdiction of England and Wales the default law and jurisdiction of choice in the global commercial world." (OXILP)

SRA response

We have noted the general support for the assessments to be permitted to take place internationally, subject to adequate safeguards, and this was a view reiterated at the meeting with assessment providers. Further consideration will be given to this when the assessment system has been formalised and when tender submissions are received.

Q18 Should special provision be made in the QLTS for Distinguished Specialist Practitioners?

We proposed abolishing the Distinguished Specialist Practitioners route which exists under the current regulations.

Respondents were not in favour of special provision for Distinguished Specialist Practitioners.

"Special provisions for particular groups of practitioners will give the scheme an element of subjectivity. This must be avoided." (The Law Society)

"There should not be one rule for one person and another rule for another." (Anon)

"A special provision for Distinguished Specialist Practitioners would allow certain experienced lawyers to be admitted in England and Wales, irrespective of their home profession. It is vital that an element of flexibility and discretion is retained so that we can make sure that we attract the most talented international lawyers to England and Wales." (Anon)

SRA response

We propose to abolish the Distinguished Specialist Practitioners category as this provision is rarely used (4 applicants in the last 4 years) and introduces an element of subjectivity into the admissions process.

This issue is dealt with in the equality impact assessment.

Q19 Should special provision be made in the QLTS for academic lawyers who have not qualified as practitioners?

We proposed abolishing the academic lawyers route which exists under the current regulations.

Respondents were not in favour of special provision for academic lawyers.

"Special provisions for particular groups of practitioners will give the scheme an element of subjectivity. This must be avoided." (The Law Society)

SRA response

We also propose to abolish the academic lawyer category. Again this provision is rarely used (3 applicants in the last 4 years) and is subjective.

This is dealt with in the equality impact assessment.

Q20 What are your views on the possible equality and diversity impact of the new approach?

> "The equality and diversity impact of [the] increased cost is likely to be significant. If transferees are required to travel to the UK to sit assessments, this impact will increase." (The Law Society)

The Law Society of Scotland reiterated concerns about cost.

SRA response

We are committed to promoting equality and diversity within the solicitors' profession and will attempt to anticipate requests for reasonable adjustments and design out any potential disadvantages.

Whilst the costs of applying to be admitted via the transfer scheme will almost definitely increase, they will not be out of keeping with costs for admission via a transfer route for other comparable professional bodies. Again, the primary concern to the SRA is to be assured that it is admitting the right people to the profession, and this will without doubt have cost implications.

Annex A

List of (identifiable) respondents

Bar Standards Board

Behcet Bicakci

BPP Professional Education

Ciaran McNamee

Claire Adenis-Lamarre

Clifford Chance LLP

DLA Piper

Freshfields Bruckhaus Deringer

Law Council of Australia

Law Society of Ireland

Law Society of Northern Ireland

Law Society of Scotland

Legal Education Training Group (LETG)

Legal Services Commission

MGAP Attorneys at Law

Oxford Institute of Legal Practice

Patrick White

Skadden, Arps, Slate, Meagher & Flom (UK) LLP

Solaw International Inc

Sue Nelson