

## Draft SRA Qualified Lawyers Transfer Scheme Regulations [2011] (Annex F7)

### SRA Qualified Lawyers Transfer Scheme Regulations [2011]

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**[Authority:** Made on the [DD day of MM YYYY] by the Solicitors Regulation Authority Board under sections 2 and 28 of the Solicitors Act 1974 with the approval of the Legal Services Board under section 83 of, and paragraph 19 of Schedule 4 to, the Legal Services Act 2007

**Date:** These regulations came into force on [1 October 2011]

**Replacing:** The SRA Qualified Lawyers Transfer Scheme Regulations 2010

**Regulating:** lawyers seeking to be admitted as *solicitors* via transfer from another jurisdiction or other UK qualified lawyer, and lawyers seeking admission by virtue of European Directives 2005/36/EC and 98/5/EC]

### Introduction

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*These regulations* govern the qualification process for lawyers seeking to be admitted as *solicitors* via transfer from another jurisdiction. They also set out the means by which certain lawyers can seek admission by virtue of European Directive 2005/36/EC and *the Establishment Directive*.

Education and training performs the underpinning, fundamental role in regulating *solicitors* – the creation of competent and ethical practitioners. *We* regulate the transfer process in order to give admitted *solicitors* the tools they need to adhere to *the Principles*.

*The Principles* are all pervasive, and apply all the time. Outcomes relevant to lawyers transferring from another jurisdiction are listed beneath *the Principles*.

The following *Principles* will be of relevance in the context of qualifying as a *solicitor*.

You must:

1. uphold the rule of law and the proper administration of justice;
2. act with integrity;
3. not allow *your* independence to be compromised;
4. act in the best interests of each *client*;
5. provide a proper standard of service to *your clients*;
6. behave in a way that maintains the trust the public places in *you* and in the

provision of legal services;

7. comply with *your* legal and regulatory obligations and deal with *your* regulators and ombudsmen in an open, timely and co-operative manner;

8. run *your* business/carry out *your* role in the business effectively and in accordance with proper governance and sound financial and risk management principles;

9. run *your* business/carry out *your* role in the business in a way that encourages equality of opportunity and respect for diversity;

10. protect *client money* and *assets*.

## Outcomes

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The desired outcomes which apply to *these regulations* are that all *solicitors* who transfer from another jurisdiction:

- have achieved an appropriate standard of competence;
- undergo objective assessment to demonstrate this competence;
- are of proper *character and suitability*;
- have achieved an appropriate standard of written and spoken English;
- maintain competence through relevant ongoing training; and
- act so that *clients*, and the wider public, will have confidence that this has been demonstrated.

*You* must achieve, and where relevant continue to meet, these outcomes.

These outcomes, and the regulations that flow from them, apply to all those who are intending to become *solicitors* via transfer.

## 1. Interpretation and definitions

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(1) Words and phrases not expressly defined in *these regulations* unless the context otherwise requires bear the same meaning as they bear in the Solicitors Act 1974 in Chapter 14 of the Solicitors' Code of Conduct [2011].

(2) In *these regulations*:

all European jurisdictions to which Directive 2005/36/EC and *the Establishment Directive* apply are *Recognised Jurisdictions*;

**"assessment organisation"** means the *assessment organisation* awarded the initial three year contract to provide the *QLTS assessments*, together with any other *assessment organisations* subsequently authorised to provide the *QLTS assessments* after the initial three year period has expired;

**"character and suitability"** has the meaning given to it in the Suitability Test;

**"commencement date"** means the date on which *we* bring *these*

*regulations* into force;

<b>"entitled to practise"</b>	means having the right to practise without restrictions or conditions as a <i>Qualified Lawyer</i> of the <i>Recognised Jurisdiction</i> ;
<b>"full route to qualification"</b>	means that the applicant has completed the <i>full route to qualification</i> in the <i>Recognised Jurisdiction</i> and is not basing the application on the completion of a shortened or fast-track route completed in the <i>Recognised Jurisdiction</i> ;
<b>"International Lawyers"</b>	means lawyers who are not basing their application on a professional qualification as a <i>Qualified Lawyer</i> gained within the <i>UK</i> or within the <i>EEA</i> or <i>Switzerland</i> ;
<b>"QLTR" or "Qualified Lawyers Transfer Regulations"</b>	means the <i>Qualified Lawyers Transfer Regulations 1990</i> and <i>2009</i> ;
<b>"QLTR Certificate of Eligibility"</b>	means a certificate issued under the <i>QLTR</i> ;
<b>"QLTS assessments"</b>	means the suite of assessments approved by <i>us</i> and provided by the <i>assessment organisation</i> ;
<b>"QLTS Certificate of Eligibility"</b>	means a certificate of eligibility to take the <i>QLTS assessments</i> under <i>these regulations</i> , or an authorisation under <i>these regulations</i> to apply for admission as a <i>solicitor</i> without taking any of the <i>QLTS assessments</i> ;
<b>"QLTT" or "Qualified Lawyers Transfer Test"</b>	means the tests which some lawyers are required to pass under the <i>QLTR</i> ;
<b>"Qualified Lawyer"</b>	means a lawyer with a professional title which <i>we</i> have recognised as broadly similar to that applying to <i>solicitors</i> . The list of <i>Qualified Lawyers</i> and relevant criteria are available on <i>our</i> website;
<b>"Recognised Jurisdiction"</b>	means a jurisdiction which <i>we</i> have recognised as having a regulatory system which is broadly similar to that applying to

*solicitors*. The list of *Recognised Jurisdictions* and relevant criteria are available on *our* website;

**"these regulations"** are the SRA Qualified Lawyers' Transfer Scheme Regulations [2011];

**"UK Qualified Lawyer"** means *solicitors* and barristers qualified in Northern Ireland, *solicitors* and advocates qualified in Scotland and barristers qualified in England and Wales;

**"us" and "we"** for the purpose of *these regulations* means the *SRA* and references to **"our"** should be construed accordingly;

**"you"** for the purpose of *these regulations* means a person seeking admission as a solicitor via transfer in accordance with these regulations, and references to **"your"** will be construed accordingly.

## Guidance note

A shortened or fast-track route is where non-domestic lawyers are not assessed on all the same outcomes/subjects/practices in the law of that jurisdiction as full-route candidates prior to qualification.

A *Qualified Lawyer* is one whose qualification:

- gives the lawyer rights of audience;
- makes the lawyer an officer of the court in that jurisdiction;
- has been awarded as a result of a generalist (non-specialist) legal education and training.

A *Recognised Jurisdiction* is one where:

- to become a *Qualified Lawyer* applicants have completed specific education and training at a level that is at least equivalent to that of an English/Welsh H- Level (e.g. Bachelor's) degree;
- members of the *Qualified Lawyer's* profession are bound by an ethical code that requires them to act without conflicts of interest and to respect their *client's* interests and confidentiality;
- members of the *Qualified Lawyer's* profession are subject to disciplinary sanctions for breach of their ethical code, including the removal of the right to practise.

## 2. Eligibility

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- (1) Subject to regulations 2(2) and 2(4) below, if *you* seek to establish eligibility to apply for admission under *these regulations*, *you* must provide such evidence as *we* may require to show that *you*:
  - (i) are a *Qualified Lawyer* in a *recognised jurisdiction*;
  - (ii) have followed the *full route to qualification* in the *recognised jurisdiction*;
  - (iii) are entitled to practise as a *Qualified Lawyer* of the *recognised jurisdiction*;
  - (iv) have satisfied any applicable English Language requirements published by *us*; and
  - (v) are of the *character and suitability* to be admitted as a *solicitor*.
- (2) For the avoidance of doubt, any lawyer applying for admission pursuant to European Communities Directive 2005/36/EC or any legislation implementing that Directive in the *UK* is deemed to have satisfied 2(1)(iv) above.
- (3) *We* shall acknowledge receipt of *your* application under Directive 2005/36/EC within one month of receipt, and shall inform *you* if any document is missing.
- (4) Any lawyer applying for admission pursuant to *the Establishment Directive* or any legislation implementing that Directive in the *UK*, is deemed to have satisfied 2(1)(ii) and (iv) above.
- (5) If *we* are satisfied that *you* are eligible, *we* must issue a *QLTS Certificate of Eligibility* to that effect.
- (6) If *you* do not hold a *QLTS Certificate of Eligibility*, *you* may not register with the *assessment organisation* to take any of the *QLTS assessments*.
- (7) A *QLTS Certificate of Eligibility* shall remain valid for a period of five years from the date of its issue. *You* cannot apply for a second or subsequent *QLTS Certificate of Eligibility* before the expiry of any existing certificate of eligibility.

### Guidance note

*Our* English Language requirement is that if *you* are not applying through one of the EU Directives, *you* must evidence to *us* that *you* are competent in the English language at Level C2 of the Common European Framework of Reference for languages (CEFR). The requirement can be evidenced in four ways:

- Option 1 Pass an *SRA* approved English language test at CEFR Level 2 or above within two years of *your* application for a *QLTS Certificate of Eligibility*.
- Option 2 Hold a degree assessed by UK NARIC using the English Language Assessment service as being taught in English and equivalent to a *UK* H-Level (e.g. Bachelors) degree.
- Option 3 Hold an H-Level (e.g. Bachelors) degree or higher from a university recognised by NARIC in a country where NARIC has stated that all higher education takes place in English.
- Option 4 Hold an H-Level (e.g. Bachelors) degree or above from a Department for Business Innovation and Skills recognised university.

For further information on these requirements please refer to "[Completing the QLTS application](#)" on *our* website.

### 3. *QLTS assessments*

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- (1) We shall:
- (i) publish guidelines and outcomes in relation to the *QLTS assessment*,
  - (ii) validate and authorise the provision of the *QLTS assessments* by the *assessment organisation*, and
  - (iii) monitor the provision of the *QLTS assessments* by the *assessment organisation*.
- (2) *International Lawyers* must pass all the *QLTS assessments*.
- (3) If *you* are a lawyer applying for admission pursuant to European Communities Directive 2005/36/EC or any legislation implementing the Directive in the *UK*, or any *UK Qualified Lawyer*, *you* may be required to pass one or more *QLTS assessments*, as *we* shall determine.

#### **Guidance note**

The *QLTS Outcomes* are available from *our* website – [www.sra.org.uk](http://www.sra.org.uk). The *QLTS Outcomes* set out the areas which will be tested in the assessments. If *you* are a candidate, *you* should refer to the *assessment organisation* for further information on the content and format of the assessments.

The assessments are in three parts:

- Part 1 - Multiple Choice Test (MCT);
- Part 2 - Objective Structured Clinical Examination (OSCE);
- Part 3 - Technical Legal Skills Test (TLST).

Part 1 must be passed before Parts 2 and 3 are attempted. Parts 2 and 3 can be taken in any order. The rules allow three attempts at each of the three parts of the assessments during the five year validity of *your* certificate of eligibility. If *you* fail any part of the *QLTS assessments* three times, *you* will need to wait until the expiry of *your* existing *QLTS Certificate of Eligibility* before applying for a new one. This is to encourage *you* to take measures during this time to improve *your* results the next time around.

#### **4. Review of lists of *Recognised Jurisdictions* and *Qualified Lawyers***

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- (1) We will review the lists of *Recognised Jurisdictions* and *Qualified Lawyers* every five years or whenever written evidence is received which suggests the need for a jurisdiction or qualification to be reviewed.
- (2) For the avoidance of doubt, if *you* have not qualified in a *Recognised Jurisdiction* and/or are not a *Qualified Lawyer* for the purposes of *these regulations*, *you* have no right to appeal this designation by *us*.

#### **5. Lawyers seeking admission under *the Establishment Directive***

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- (1) If *you* seek to establish eligibility pursuant to the Establishment Directive or any legislation implementing that Directive in the UK, *you* must prove to *us* that *you* have met the requirements of the *Establishment Directive* and implementing legislation and in particular that *you* have:
  - (i) satisfied the nationality requirements set out in the legislation; and
  - (ii) satisfied *our* registration requirements; and either
  - (iii) effectively and regularly pursued for a period of at least three years a professional activity in the *UK* in the law of the *UK* including Community Law in accordance with article 10.1 of *the Establishment Directive*; or
  - (iv) effectively and regularly pursued a professional activity in the *UK* for a period of at least three years where *your* professional activity in the law of the *UK* has been for a period of less than three years, under the conditions set out in article 10.3 of *the Establishment Directive*.

#### **6. Review of decisions on eligibility**

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- (1) Subject to regulation 4(2), if *you* seek to establish eligibility under regulation 2 (including regulation 5) may, within one month of receiving notification from *us* of any decision to refuse to issue a *QLTS Certificate of Eligibility*, ask for the application to be reviewed.
- (2) Where *you* are seeking to establish eligibility (other than pursuant to Directive 2005/36/EC or *the Establishment Directive*) and *we* have:

- (i) refused the initial application on the ground that *you* are not suitable to be admitted as a *solicitor*; and
- (ii) determined not to reverse that refusal on review;

*you* have the right, within three months of receiving notification from *us* of *our* decision on the review, to appeal to the High Court under regulation 2 of the SRA Admission Regulations [2011].

- (3) Where *you* are seeking to establish eligibility pursuant to Directive 2005/36/EC and *we* will:

- (i) fail to take a decision on the initial application and notify it to *you* within four months of receipt of all the relevant documents;
- (ii) refuse the initial application; or
- (iii) have determined not to reverse that refusal on a review;

*you* have the right, within four months of receiving notification or deemed notification of *our* decision, to appeal to the High Court under regulation 36 of the European Communities (Recognition of Professional Qualifications) Regulations 2007.

- (4) Where *you* are seeking to establish eligibility pursuant to *the Establishment Directive* and *we*:

- (i) fail to take a decision on the initial application and notify it to *you* within four months of receipt of all the relevant documents;
- (ii) refuse the initial application; or
- (iii) have determined not to reverse that refusal on a review;

*You* have the right, within three months of receiving notification or deemed notification of *our* decision, to appeal to the High Court under regulation 35 of the European Communities (Lawyer's Practice) Regulations 2000.

## **7. Character and suitability of prospective solicitor**

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- (1) If *we* have granted *you* a *QLTS* Certificate of Eligibility under regulation 2, and at any time *we* are not satisfied as to *your* character and suitability to become a solicitor, *we* may on such terms as *we* determine prohibit any attempt at any or all of the *QLTS assessments*.
- (2) If *we* impose a prohibition under regulation 7(1), *you* may within one month of receiving notification from *us* of *our* decision, ask for the matter to be reviewed.



- (3) If *you* have been authorised to apply other than pursuant to Directive 2005/36/EC, *you* have the right to appeal to the High Court under regulation 3 of the SRA Admission Regulations [2011] within three months of receiving notification from *us* of *our* decision on a review under regulation 7(2).
- (4) If *you* have been authorised to apply pursuant to Directive 2005/36/EC, and we:
- (i) prohibit any attempt at any or all of the *QLTS* assessments under regulation 7(1); or
  - (ii) refuse to lift that prohibition on *your* application for review;

*you* have the right, within four months of receiving notification of *our* decision, to appeal to the High Court under regulation 36 of the European Communities (Recognition of Professional Qualifications) Regulations 2007.

- (5) *You* may make up to three applications to *us* to remove a prohibition after intervals of not less than 12 months from the final determination as to the imposition of the prohibition, or from the final determination of *your* previous application for review, as the case may be.
- (6) *You* have the right to appeal to the High Court under regulation 3 of the SRA Admissions Regulations [2011] within three months of receiving notification from *us* of *our* decision on an application for the removal of a prohibition under 7(5).

#### **Guidance note**

For further information please consult the Suitability Test[link].

## **8. Forms and fees**

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- (1) If *you* wish to sit the *QLTS* assessments, *you* must give notice to the *assessment organisation* in the prescribed form and pay the prescribed fee.
- (2) If *you* wish to make an application or give notice to *us* in accordance with *these regulations*, *you* must do so in the prescribed form and pay the prescribed fee.
- (3) If at the time of making *your* application or giving a notice, no form has been prescribed by *us* or the *assessment organisation*, the application or notice must be in writing, signed by *you* or the person giving it and provide such information as is necessary to enable *us* or the *assessment organisation* to deal with the application.

- (4) Whether or not the application is made or notice given on a prescribed form *we may, in our absolute discretion, require you, or the person giving notice, to furnish such further information as we consider necessary.*
- (5) *We may require:*
- (i) *your application to be supported by such evidence as we consider necessary;*
  - (ii) *facts relevant to your application to be accompanied by statutory declaration; and*
  - (iii) *your attendance for an interview.*
- (6) For the avoidance of doubt, *you may not apply to us for a review of a decision by an assessment organisation where you have failed one or more QLTS assessment(s).*

## **9. Admission as a solicitor**

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Admission as a solicitor takes place under Part 3 of the SRA Admission Regulations [2011].