

Changes to our Principles for Qualified Lawyers: initial impact assessment

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Introduction

1. This document explores the potential impact of our proposals to amend our principles for qualified lawyers (the principles)¹ seeking admission in England and Wales once the Solicitors Qualifying Examination (SQE) is introduced. It should be read in conjunction with our [consultation](#).
2. We are proposing to:
 - a) Remove the requirement for qualified lawyers seeking an exemption from the SQE to be from a jurisdiction we recognise.
 - b) Make clear that qualified lawyers can demonstrate the language requirement in either English or Welsh in line with our [Authorisation of Individuals regulations](#).
 - c) Extend the language requirement to qualified lawyers who are exempt from parts of SQE2 (as well as the whole of it, as originally drafted) where we have serious and concrete doubts about their language knowledge.
 - d) Remove the word “test” from the language requirement section.
3. Given that the SQE is a new approach to qualification, we do not hold data on exemptions for qualified lawyers that can help us fully understand the likely impact of our proposals. We will use this consultation to further explore our proposals with stakeholders.
4. We have also analysed our proposals against our duties under [The Equality Act 2010](#), to promote the [Regulatory Objectives](#) and the [Principles of Better Regulation](#). Where we have identified a potential risk, we have set out how we will manage it.
5. We will publish a final impact assessment alongside our consultation response document in summer 2020.

¹ Our principles outline how we will recognise the knowledge, skills and competences qualified lawyers may have gained through professional qualifications and professional experience in deciding to exempt them from all or parts of SQE 2.

Summary of potential impacts

6. Our initial analysis has highlighted the following impacts:

- a) Removal of an unnecessary barrier for qualified lawyers when applying for a full or partial exemption from SQE2 by recognising professional qualification and/or experience rather than jurisdiction.
- b) Enabling Welsh speaking qualified lawyers to demonstrate language knowledge in Welsh.
- c) Increased public protection by assuring that qualified lawyers who are partially exempt from SQE2 have met the standard of English or Welsh language knowledge we and the public expect.
- d) Any potential indirect discrimination on grounds of race or nationality for applicants born and/or brought up in a non-English speaking country is mitigated by:
 - Only applying the English or Welsh language test requirement to those qualified lawyers where we have serious and concrete doubts about their language knowledge.
 - Enabling qualified lawyers to whom the requirement applies to demonstrate English or Welsh language knowledge through a wide and flexible range of approaches.
- e) There may be some qualified lawyers who may need to take a language test in order demonstrate their language knowledge. We have sought to minimise this by proposing a flexible approach to demonstrating English or Welsh language knowledge. Our view is that any additional cost that a qualified lawyer may incur in taking a language assessment is proportionate and justified so that we can assure English or Welsh language knowledge.

Remove the requirement for qualified lawyers seeking an exemption from the SQE to be from a jurisdiction we recognise

7. We propose to remove the requirement for an overseas jurisdiction to be recognised by us when a qualified lawyer is seeking exemption from the SQE. We will ensure that a qualified lawyer has the necessary skills and knowledge equivalent to the SQE through analysing and recognising the qualification they have obtained together with the experience they have gained. This is assessed against the content and standard of the SQE, or the relevant part of it.

8. Our proposal to rely on assessing the professional qualifications of applicants regardless of the jurisdiction in which they were obtained means that we do not need to assess the particular features of the jurisdiction in which the qualification was obtained or in which the lawyer has been practising.. If we proceed with our proposal, it could increase the number of qualified lawyers who could apply for admission.
9. We recognise that there is risk if qualified lawyers do not understand our amendments if approved. We will communicate our changes with qualified lawyers and jurisdictions.
10. We do not anticipate at this stage that our proposal will have a detrimental or disproportionate impact on qualified lawyers from any protected characteristic group. We will use the consultation to engage with stakeholders to develop our thinking.

Assessing the Welsh language knowledge of qualified lawyers

11. We propose to amend the principles to make clear that qualified lawyers can demonstrate their language knowledge when applying for their Practising Certificate in either English or Welsh in line with our Authorisation of Individuals Regulations.
12. The principles as drafted currently restrict a Welsh speaking qualified lawyer from demonstrating their language knowledge to us and being granted practising rights. This could prevent a Welsh speaking qualified lawyer from providing legal services to the public and is inconsistent with our Regulation.
13. Our proposed change is designed to address this potential disadvantage. It will allow Welsh speaking qualified lawyers seeking a partial exemption from SQE2 to demonstrate their language knowledge in Welsh.
14. We have not identified any negative impacts of our proposal at this stage. Nor have we identified any impacts on qualified lawyers from any protected characteristic group. We will use the consultation to engage with stakeholders to develop our thinking.

Extend the language requirement to qualified lawyers who are exempt from parts of SQE2

15. We are proposing to amend our principles to extend the language requirement to those qualified lawyers who may be partially as well as fully exempt from SQE2 to future-proof our regulations and provide us with the flexibility we need to cover all possible assessment designs.
16. It is a key part of consumer protection that we, and the public, can be confident that solicitors practising in England and Wales are competent in English or

Welsh. We will have serious and concrete doubts about English or Welsh language knowledge of an applicant for a first practising certificate if they have not taken any part of the SQE or if they have taken parts of the SQE and in doing so have not demonstrated their knowledge in all the four elements of English or Welsh language knowledge

17. We recognise that our proposals could result in indirect discrimination on grounds of race or nationality for applicants born and/or brought up in a non-English or Welsh speaking country.
18. We have taken appropriate and proportionate steps to mitigate this risk by:
 - a) Only applying the requirements where we have serious and concrete doubt about the applicant's language knowledge in English or Welsh.
 - b) Targeting the requirements at those elements of English or Welsh knowledge which they have not been able to demonstrate through taking relevant elements of the SQE2.
 - c) Developing flexible guidance (annex 1) against which an applicant can demonstrate English or Welsh language knowledge if required.
19. Our proposal is a reasonable response to this risk. It is a necessary and proportionate regulation as it enables us to protect the public by making sure that qualified lawyers who are partially or fully exempt from SQE2 are competent in the English or Welsh language.
20. We know that many organisations who test language proficiency have in place provisions for those individuals with special requirements. For example, the International English Language Testing System (IELTS) is widely available and offers reasonable adjustments, for example, for those candidates who require Braille papers, lip reading and large text.
21. We do not consider that our proposal presents a significant or disproportionate barrier to admission for qualified lawyers who may need to incur a cost. Our objective is to ensure that all qualified lawyers meet the standard of language knowledge that is necessary for them to be able to provide legal services in England and Wales competently. For this reason, we consider our proposal and any cost incurred by some qualified lawyers justifiable.
22. We will regularly review our language knowledge requirement as part of overall evaluation of the SQE. This will help us make sure that there are no unintentional barriers to qualified lawyers who cannot demonstrate English or Welsh language knowledge outside of our guidance. We will also assess the application of this requirement.

23. We will provide guidance to qualified lawyers to outline how language knowledge can be evidenced. Visually impaired candidates will be able to discuss guidance with our Contact Centre by phone.
24. We have not identified any impact on qualified lawyers from protected characteristics. We will engage with stakeholders during the consultation to explore in more detail whether our guidance for demonstrating language knowledge is broad enough and whether there is anything further we can do to mitigate the risk of additional cost being a barrier for those qualified lawyers who cannot meet our language guidance.
25. If we adopt this approach, we propose to remove the word “test” from the language requirement section of our principles. We consider that it is unnecessary as a “test” does not reflect the flexibility in how a qualified lawyer can demonstrate their language knowledge if required.

Analysis of our proposals on our Regulatory objectives and Better Regulation Principles

26. In this section we consider the impact of our proposals on our obligations under the Equality Act 2010, to promote the [Legal Service Act regulatory objectives](#) and the [Principles of Better Regulation](#).

Impact of our proposals on the Equality Act 2010

27. We are a public body and therefore subject to the public sector equality duty under the Equality Act to consider how different people will be affected by our activities so that our policies and services are appropriate and accessible to all.
28. We want to be flexible in how a qualified lawyer can seek admission and to maintain our obligation to make sure that all solicitors have the required standard of English or Welsh language knowledge.
29. At this stage, our proposals have a limited impact on most protected characteristic groups. We have identified potential indirect discrimination on the grounds of race or nationality, as set out at paragraph 17, and we have explained why there is an objectively justifiable reason for this in the public interest. We have outlined how we will mitigate and minimise this risk as far as possible. We will use the consultation exercise and ongoing stakeholder engage to identify and further explore impacts.

How our proposals relate to the Equality Act 2010

Protected Characteristic	Impact
Age	We have not encountered any evidence at this stage to suggest that the proposed changes to our principles would have a differential impact because of the age of a qualified lawyer.
Disability	We have not encountered any evidence at this stage to suggest that the proposed changes to our principles would have a differential impact because the qualified lawyer has a disability.
Marriage or civil partnership	We have not encountered any evidence at this stage to suggest that the proposed changes to our principles would have a

	differential impact on qualified lawyers from this category.
Pregnancy and maternity	We have not encountered any evidence at this stage to suggest that the proposed changes to our principles would have a differential impact on qualified lawyers who are pregnant or on maternity leave.
Race	<p>We recognise that if we proceed with our proposals there may be indirect discrimination on grounds of race or nationality for applicants born and/or brought up in a non-English or Welsh speaking country. We have outlined the measures to mitigate the impact in paragraph 17. Our proposals are a proportionate and justified response to the issue and is in the public interest.</p> <p>Our proposal to remove the requirement for recognition of the jurisdiction in which a qualified lawyer holds a professional qualification could increase the number of qualified lawyers who could apply for admission from a wider number of jurisdictions. This is a positive impact.</p>
Religion or belief	We have not encountered any evidence at this stage to suggest that the proposed changes to our principles would have a differential impact because of the religion or belief of a qualified lawyer.
Gender	We have not encountered any evidence at this stage to suggest that the proposed changes to our principles would have a differential impact because of the gender of a qualified lawyer.
Sexual orientation	We have not encountered any evidence at this stage to suggest that the proposed changes to our principles would have a

	differential impact on the sexual orientation of the applicant.
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How our proposals relate to the LSA regulatory objectives

Regulatory objective	Impact
Protecting and promoting the public interest	Our proposal to apply the English or Welsh language test requirement to qualified lawyers who are partially exempt from SQE2 protects the public by making sure that they meet the standard of language knowledge necessary to provide competent legal services in England and Wales. This helps increase confidence in the legal system.
Supporting the constitutional principle of the rule of law	Our proposal supports this objective by making sure partially exempt lawyers from SQE2 meet the standard of English and Welsh language knowledge to uphold the rule of law.
Improving access to justice	<p>Our proposal to enable a Welsh speaking qualified lawyer to demonstrate Welsh language competence addresses the potential disadvantage they face in not being able to do so.</p> <p>Our proposal to recognise professional qualifications rather than the jurisdiction of a qualified lawyer could encourage qualified lawyers from jurisdiction we currently do not recognise to seek admission.</p> <p>Both proposals remove unnecessary barriers to entry that offer no real public protection. As a result, the public could have improved access to legal help.</p>
Protecting and promoting the interests of consumers	Our proposal to apply the English or Welsh language requirement qualified lawyers who are partially or fully exempt from SQE2 means that we make sure they meet the standard of English or Welsh language knowledge necessary to provide competent legal services.

Promoting competition in the provision of services	Our proposal to recognise professional qualifications of qualified lawyers rather than their jurisdictions could help increase competition and provision of legal services by enabling a wider range of qualified lawyers to enter the market.
Encouraging an independent, strong, diverse and effective legal profession	Our proposals contribute to a strong and diverse profession. They ensure that all lawyers have the necessary level of knowledge. In addition, they reduce unnecessary barriers to entry from a diverse range of jurisdictions: focusing on professional qualifications could increase the number of qualified lawyers seeking admission.
Increasing public understanding of the citizen's legal rights and duties	Making sure that qualified lawyers have the requisite language skills helps promote this objective.
Promoting and maintaining adherence (by authorised persons) to the professional principles	Our proposal to apply the English or Welsh language test requirement to qualified lawyers seeking a partial exemption from SQE2 and with whom with have a serious and concrete doubt about their language knowledge is consistent with this objective because: <ul style="list-style-type: none"> • Qualified lawyers can maintain proper standards of work. • Qualified lawyers can act in the best interests of their clients.

How our proposals relate to the Better Regulation Principles

Better Regulation Principle	Impact
Proportionate	Our proposals are proportionate to the risk we have identified. The language requirement only applies to those where we have serious and concrete doubts. Removing the requirement for an overseas jurisdiction to be recognised by us when a qualified lawyer is seeking exemption from the SQE removes unnecessary regulations that offer no real public protection.
Accountable	If we implement our proposals, we will publish our revised principles for qualified

	<p>lawyers so that individuals are clear on how the English or Welsh language requirements apply. We will also publish our criteria for demonstrating language knowledge, so applicants are clear on how they can demonstrate language knowledge if required.</p>
Consistent	<p>Our proposals ensure consistency between our principles and SQE admission regulations. Our revision also enables us to take a consistent approach to the admission of qualified lawyers, for example, those that have been partially and fully exempt from SQE2.</p>
Transparent	<p>As above our requirements will be clear, consistent and published. We will engage with all jurisdictions and qualified lawyers to explain our proposed changes.</p>
Targeted	<p>Our proposals are a targeted response to ensuring consistency with our regulations and protecting the public. We will only target the English or Welsh language requirement at those elements of language knowledge which a qualified lawyer has not been able to demonstrate through taking relevant elements of the SQE2 and in relation to which we have serious and concrete doubts.</p> <p>Our proposed focus on the qualifications and experience of qualified lawyers seeking an exemption from SQE2 rather than their jurisdiction means our approach is targeted on assuring competence whilst increasing flexibility in qualification.</p>

Conclusion

30. At this stage we do not consider that there are any significant risks with our proposal to amend our principles to clarify that apply an English or Welsh language requirement will apply to applicants who are partially and fully exempt from the SQE2.
31. Similarly, we do not consider that there are any significant risks with our proposal to amend our principles to recognise professional qualifications rather than jurisdictions.
32. We will continue to engage with stakeholders during the consultation exercise to seek views on the impacts we have identified and whether there are further impacts we need to consider.