

Education and Training Regulations Review: Red tape 3

Analysis of responses and SRA response

December 2014

Introduction

1. This report follows our recent consultation, launched for 8 weeks in September 2014, on our proposals to make further changes to our education and training regulations, principally in relation to the Qualified Lawyers Transfer Scheme. In July 2014 we introduced changes to our education and training regulations which removed unnecessary layers of regulation and enabled us to simplify our processes and reduce fees. This red tape initiative, as with the one carried out in July, does not change any of the required outcomes of the current qualification pathway: the proposed changes are largely focussed on ensuring that our education and training regulations are risk-based, proportionate, effective and consistent for all routes to the profession.
2. The consultation paper included three proposals for change:
 - to recognise Welsh language skills as an outcome of our education and training regulations as an alternative to English language skills for solicitors practising in Wales
 - to remove requirements for qualified lawyers overseas to have a certificate issued by us confirming their eligibility to sit the Qualified Lawyers Transfer Scheme Assessment ('QLTS'). In removing this requirement we would also be removing regulation which relates to a requirement to undertake a separate English Language test for non-EEA international applicants and the restriction on the maximum number of assessment attempts permitted in a 5 year period
 - to remove the requirement for solicitors to undertake the Management Course Stage 1 (MCS1)

Responses received

3. We received 23 responses from a variety of stakeholders including higher education providers, individual solicitors and firms, local Law Societies, member groups, the Junior Lawyers Division and the Law Society. A list of respondents is attached at the end of the paper. Not all respondents expressed a view on each proposal: where a percentage is expressed it is a

percentage of those who responded to that particular proposal. The range of responses varied from substantive comments on each of the proposals to single yes/no responses. These comments are summarised below.

Overview of the responses

4. Responses were largely supportive except for proposals which removed restrictions around the assessment period for QLTS candidates. A small number of responses were not supportive of the changes and called for more regulation. Some support was qualified, for example:

"We understand the logic of the SRA's proposals and that they chime in with the outcomes based philosophy of the current Code. However we have some concerns...regarding how the SRA's preferred approach supports the SRA's initiative to streamline qualification process by removing those requirements which add cost, while neither assuring quality nor reducing risk." – The Law Society.

The Proposals

Proposal 1 - to include the Welsh language in education and training outcomes

5. 83% of respondents expressed support for the proposal and foresaw only positive impacts in ensuring parity of treatment of the Welsh and English language in the training regulations. The Law Society said that it *"applauds the SRA for taking on board the comments of the Law Society, and correcting the current unlawful provision."*
6. The concern of those who did not fully support the proposal related to possible costs of translation where, for example, the transaction was conducted in English and Welsh. The Junior Lawyers Division, although supportive, raised two concerns: *"(i) whether there is a demand for practitioners who can speak and practise only in Welsh; and (ii) the impact for career progression for solicitors who are only able to practice in Welsh"*

SRA response

7. We are pleased with the support for this proposal to meet our legal obligations to place the Welsh language on an equal footing with English language.

Proposal 2 – to remove the requirement for a lawyer who is qualified in a jurisdiction outside of the UK to obtain a certificate of eligibility to undertake the QLTS assessment.

8. Removing the requirement to obtain a certificate of eligibility prior to completing the QLTS assessment would also impact on the following functions served by this process:
 - it acts as an early check on character and suitability

- it acts as a check on English language skills of non-European lawyers who have not studied in English
 - it sets a 5 year time limit within which all of the assessments must be completed and restricts the number of assessment attempts within this period to three.
9. In relation to the early check on character and suitability we asked if there was agreement to its removal provided we retained the check at admission and that QLTS candidates could seek an early check of character and suitability if they wished. 60% of respondents supported the proposals. The Lawyers with Disabilities Division said it will reduce duplication and the City of London Law Society said that *"It seems an unnecessary duplication of time and effort and unnecessary expenditure for candidates."*
 10. Applicants from non-European countries are required to provide evidence of English language skills by having studied at degree level in English or by passing an English language test with an approved test provider. In removing the need for a certificate of eligibility we are also placing all candidates on a level footing by relying on the standards of English language skills required to pass the QLTS assessments. 82% of respondents support the proposal and expressed confidence in the QLTS assessment as a means of ensuring that candidates have the appropriate standards of English language skills to take accurate instructions, to give clear and accurate advice, to understand and be understood, to draft legal documents and exercise rights of audience. A number of provisos were however expressed. We have been asked to ensure that all candidates are very clear about the standards of English required to be competent in the assessment and to monitor standards of English over time.
 11. Current regulation requires both stages of the QLTS assessment to be completed within five years. 35% of respondents supported the removal of this restriction. The Law Society said that it *"agrees that the removal of this restriction is in line with other proposals within this area and has no objection. Whilst the current system does not restrict candidates from retaking the exams indefinitely, it does restrict the timescales for them completing the necessary parts and given the restrictions on where the exams can be taken and the expense required for travel to do so, this seems a proportionate and fair removal of an unnecessary barrier to entry."* Those who were in favour of retaining the 5 year period were so because they said it imposed a rigour to the assessment and aligned to the current requirement to complete the Legal practice Course within 5 years.
 12. The same level of support was expressed for the removal of the restriction on the number of assessment attempts within any given period. Views against the proposal were similar to those given in support of retaining a five year restriction on completing the assessment. The Law Society and the Junior Lawyers Division expressed a concern that unlimited attempts could mean that a failing candidate will eventually pass because they have learned how to take the assessment rather than because they have acquired the level of competence required to pass. Cardiff Law School said that to allow unlimited attempts would give QLTS candidates an advantage over Legal Practice Course students who were limited to 3 attempts.

13. No additional adverse impacts or risks to the public interest were identified.

SRA response

14. We are pleased with the level of support to remove the requirement that all QLTS assessment candidates submit an early check on character in addition to the check that they will be subject to at admission. We agree with those whose support was qualified by the condition that an early check on character, if no longer mandatory, remained available, and will ensure that this is retained. We agree with the comments of the Junior Lawyers Division that requirements as to character and suitability must be clearly communicated to candidates before they attempt the assessment and we will ensure this is clear and accessible to all potential QLTS candidates. Full checks on all solicitors who qualify via this route will still be carried out prior to admission.
15. We are pleased to have support to remove the uneven impact of our regulation on UK and non-European lawyers seeking to qualify via QLTS in relation to separate and additional evidence of English language standards. We will update the guidance we currently provide on standards of English language to ensure that all QLTS candidates are made fully aware of what is required of them to meet the QLTS assessment standards.
16. In relation to the five year qualifying period and maximum number of attempts, we appreciate the concerns that have been raised that lawyers qualifying via QLTS are not placed in a more favourable position than students undertaking the LPC. Currently unless there are mitigating circumstances an LPC student must complete the course in 5 years and has a maximum of 3 attempts at each assessment. On the LPC each subject/practice area is discretely assessed and a mark awarded for each area. Assessments are completed over a period of time and are undertaken contemporaneously with learning. This is not the case with QLTS where there is no specified learning, there are a limited number of assessment opportunities and most significantly, candidates receive an overall score for each stage. A candidate cannot progress to stage 2 without first having passed stage 1.
17. We do not consider removing the restrictions provides an unfair advantage to QLTS candidates: they do not have the opportunity within a structured framework of learning and assessment to put in place the assessment strategies available to LPC students and LPC course providers.
18. We will seek approval to make changes to the Qualified Lawyers Transfer Scheme Regulations 2011 to reflect these proposals and to make them effective from 1 November 2015.

Proposal 3 – remove the requirement on individual solicitors to undertake Management Course Stage 1

19. 21 respondents answered this question. 47% of respondents to this question, including the Sole Practitioners Group, Cardiff Law School, CILEX, Lawyers with Disabilities Division and a number of local Law Societies supported our proposal to remove the requirement on individual solicitors to undertake MCS1. 47% of respondents, including the Law Society, the Junior Lawyers

Division and The University of Law raised concerns with our proposal. One respondent simply answered yes to the question.

20. Respondents who supported our proposal recognised the subject matter of MCS1 was already addressed through training delivered by regulated entities. The Kent Law Society Regulatory Committee suggested that MCS1 "*was nothing more than "common sense" and conveyed information which attendees had already picked up from their work at a law firm.*" Duplication in training and the fact that some solicitors will not use the training was cited as placing an unnecessary regulatory burden on individual solicitors and regulated entities by some respondents.
21. Some respondents also felt that the requirement to undertake MCS1 created difficulties for some regulated entities to accommodate within their wider organisational approaches to training. Birmingham Law Society suggested that the requirement to undertake MCS1 "*may actually adversely affect the training which large firms have in place as the course may not complement the firm's training programme for newly qualifieds.*"
22. Respondents who disagreed with our proposal shared a common concern that if the requirement to undertake MCS1 was removed, individual solicitors would not undertake or regulated entities would not provide financial and client management training. The effect of removing MCS1 was summarised by The University of Law, who said that MCS1 training is "*a key part of the client experience and, if solicitors do not understand the need to deal with these matters, this can lead to poor client service and risk in the way that a firm is managed.*"
23. We recognise these concerns. However, we do not believe our proposal poses a significant risk because:
 - as part of our new approach to ensuring ongoing competence, all solicitors must continue to meet their obligation under Principle 5 of the Handbook to provide a proper standard of service to clients. This involves reflecting on the quality of their practice by reference to our proposed Competence Statement that states what solicitors should be able to do and includes applying the rules of professional conduct on accounting and financial matters, and to apply good business practice. As far as solicitors are concerned, and subject to the current consultation on the proposed Competence Statement, complying with the Competence Statement will be one requirement of providing a proper standard of service in accordance with Principle 5.
 - persons who must be 'qualified to supervise' – i.e. sole practitioners, managers of authorised bodies, supervisors of those who undertake reserved work – will still be required to undertake at least 12 hours of management skills training by rule 12 of the Practice Framework Rules. This means that those people who hold roles demanding specific management training will still be under a regulatory obligation to undertake that training.

SRA response

24. We are pleased with the support for our proposal. We do not consider that the consultation has raised any significant issues that prevent us from proceeding with our proposal to remove the requirement on individual solicitors to undertake MCS1. Subject to Legal Services Board approval, we intend to remove this requirement from 1 April 2015.

List of respondents

Birmingham Law Society
Cardiff Law School
CILEx
City of London Law Society
Barrie Davies on behalf of DJM Law Ltd.
HHJ Edwards
Lawyers with Disabilities Division
John Loosemore
Junior Lawyers Division
Kent Law Society (Regulatory Committee)
Kent Law Society (Members)
Adrian Mackay
Laurence Mann
Sole Practitioners Group
The Law Society
Tonbridge Wells, Tonbridge and District Law Society
University of Law

6 respondents requested that they remain anonymous.