

## Consultation – changes to the SRA’s education and training regulations

### *Introduction*

1. This consultation forms part of our Red Tape initiative to remove, curtail or simplify regulations and processes which are not in the public interest and which do not reflect the principles of better regulation. The changes we propose in this consultation arise largely because of recent changes we have made to education and training regulations in relation to student enrolment and CPD and a need to ensure that other education and training requirements are consistent with those changes.
2. Later this Autumn and in 2015, we will be consulting on the first phase of our plans for a new qualification framework, but in the meantime we want to ensure that our current education and training framework requires only that regulation which is necessary.

### *Purpose of the consultation*

3. We are not at this stage changing any of the requirements of the current pathway to qualification as a solicitor – that is completion of the academic stage of training, the Legal Practice Course, a two year period of training with an authorised training provider and the Professional Skills Course. Nor are we changing the assessment requirements or the standard that must be achieved by lawyers from other jurisdictions who wish to qualify as a solicitor of England and Wales.
4. The proposals are as follows:
  - to recognise Welsh language skills in the outcomes prefacing 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 will also be removing regulation which relates to a requirement to undertake a separate English Language test for non-EEA international applicants and removing the restriction on the maximum number of assessment attempts permitted in a five year period
  - to remove the requirement for solicitors to undertake the Management Course Stage 1.

## ***The proposals***

### ***Proposal 1 – include the Welsh language in education and training outcomes***

5. Outcome 5 of the Training Regulations 2014 states that an individual qualifying as a solicitor will have achieved an appropriate standard of written and spoken English. To reflect legislation including the Welsh Language (Wales) Measure 2011, and the status of Welsh as an official language of Wales, we propose to expand this outcome to include written and spoken Welsh. This will enable us to meet our legal obligation not to treat Welsh-only speakers less favourably than English-only speakers. The requirement will be that solicitors practising in Wales should have achieved an appropriate standard of written and spoken English *or* Welsh.

**Consultation question 1: Do you foresee any impacts of our proposal?**

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

#### **What was the original purpose of the regulation?**

6. Lawyers who have not qualified as solicitors in England and Wales can practise in England and Wales in a variety of ways, as registered European Lawyers (REs), registered foreign lawyers (RFLs) or under the title of their home jurisdiction. It is also possible for them to re-qualify through the domestic route which will include undertaking the Legal Practice Course and a two year period of training. The QLTS provides eligible lawyers who wish to have full practising rights with a fast-track route to admission as a solicitor in England and Wales. QLTS assessment ensures that a lawyer qualified in another jurisdiction has met the standard of knowledge and skill required of a newly qualified solicitor of England and Wales.
7. When we introduced the Scheme in 2010, we also introduced a regulation which required a candidate proposing to take the QLTS assessment to establish their eligibility to sit the QLTS assessment. This was in addition to meeting all of our regulatory requirements at the admission stage and was introduced to mirror the student enrolment requirements for eligibility to commence the Legal Practice Course. It also continued a requirement under the previous regulations, where the heads of the Qualified Lawyers Transfer Test to be completed differed depending on the jurisdiction.

#### **Why are we recommending the change?**

8. We removed regulations relating to student enrolment in July 2014 following consultation earlier in the year. This meant that we were able also to remove the need for students to pay an £80 fee. This has caused us to review the function and purpose of the requirement for a Certificate of Eligibility for QLTS applicants.
9. The requirement to have a Certificate of Eligibility has the following functions:
  - it acts as a 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 five year time limit within which all of the assessments must be completed

### **Character and suitability**

10. The character and suitability check carried out as a requirement for eligibility to sit the QLTS assessments acts as early check on character and is done by requiring the individual to provide a Certificate of Good Standing from their home professional body or regulator which must have been issued within the past three months. This means that the applicant must obtain a new Certificate of Good Standing when applying for admission after completing the assessments, as it is not possible to complete all QLTS assessments in less than three months. We also carry out a full financial check and require a Disclosure and Barring Service (DBS) standard disclosure at the point of admission.
11. Between 2012 and July 2014 we issued 2,804 Certificates of Eligibility. Each applicant paid a fee of either £200 or £400 (the higher fee being paid by applicants entitled to exemption from some or all of the QLTS assessments). In the same period we admitted 652 QLTS applicants as solicitors. These 652 applicants will have been subject to the full checks on character and suitability at admission in addition to those carried out when the Certificate of Eligibility was issued. They will also have to provide a new Certificate of Good Standing. The difference between the number of applicants who have received Certificates of eligibility and those who have been admitted is in the main because the applicant has either not completed the entire diet of QLTS assessments or has taken the maximum number attempts and has not been successful.
12. We are not proposing to remove the check on character and suitability from the admission stage; it remains a statutory responsibility and all solicitors who qualify through this route will continue to need to satisfy this check. We do not however consider it proportionate or targeted to carry out the check twice on successful QLTS candidates or to carry out the check on individuals who may never pass the assessment.

### **English language requirements**

13. The Certificate of Eligibility is issued to applicants who have demonstrated that they meet the English language standards that we specify. European law<sup>1</sup> prohibits us from requiring applicants from the EEA and Switzerland to undergo a separate test of their English language skills. Applicants from within the UK and 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. The International English Language Testing System (IELTS) is an approved test commonly used and we specify that an applicant demonstrating competence in English language skills must achieve an IELTS a score of 7.5 in each of the skills of listening, reading, writing and speaking.<sup>2</sup>

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<sup>1</sup> EC Directive 2005/36/EC

<sup>2</sup> IELTS is a test designed for an academic context rather than a vocational one, but it is commonly used by professional and regulatory bodies. For example, the General Medical

14. All solicitors need to be able to use the English language with a level of competence sufficient to take accurate instructions and give clear and accurate advice, to understand and be understood, to draft legal documents and to exercise rights of audience. The QLTS assessment is in two parts: a six hour multiple choice test of legal knowledge and application of the law and the Objective Structured Clinical Examination (OSCE) which assesses knowledge and skills in the context of Business Law, Property and Probate and Litigation. The OSCEs involve the assessment of the use of language skills in legal writing, legal drafting, interviewing and advising, oral presentations/advocacy and legal research over a period of six days.<sup>3</sup>
15. The criteria applied in assessing the English language skills of the candidates is whether they can demonstrate “appropriate, clear, precise and acceptable English” and overall the standard set is that which is “readily comprehensible to any client from any background.” We consider the standard of English language skills to be sufficiently and reliably assessed in the QLTS assessments and in the light of this we consider a separate and additional requirement of proof of English language ability which can be applied only to a candidate outside the EEA to be unnecessary. This additional requirement does not manage the risk of poor standards of English in a way that is not already being addressed by the QLTS assessment. The separate English language requirement is disproportionate and an uneven impact of our regulation.
16. Instead of requiring non-EEA international candidates to provide additional evidence of English language we propose to remove the separate English language requirement altogether and rely on the QLTS assessment. We will provide guidance to candidates of the standard of English necessary for success in the assessment and subsequent practice.

### **Period of validity**

17. A Certificate of Eligibility is valid for five years. Our current regulation prohibits an individual from applying for a new certificate before the expiry of an existing one. All QLTS assessments must be completed within the five year validity period and a candidate has a maximum of three attempts at each stage. If the candidate fails any stage three times, or does not complete all stages within the five year period, he or she is required to seek a new certificate and commence all the assessments again, even those which he or she has already passed.
18. In removing the five year period we also propose to remove the restriction on the number of attempts that a candidate can have. The current regulation does not restrict the number of attempts a candidate may take; it just restricts them to three in every five year period. In removing this period of validity there is no rationale for retaining a restriction on the number of attempts a candidate may have.

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Council<sup>2</sup> specify an overall score of at least 7.5 with a score not less than 7.0 in each of the four parts of the test. The General Dental Council require an overall score of at least 7, with no score lower than 6.5 in any section. Universities specify a range between 6.5 and 7.5 for entry onto postgraduate studies in law. IELTS describe 7.5 as the level required for “a linguistically demanding academic course.”<sup>2</sup>

<sup>3</sup> 3 consecutive days for each of part 1 and part 2.

19. Removing the requirement to obtain a Certificate of Eligibility, and pay the associated fee, does not interfere with the checks that we will make at the point of admission nor does it permit individuals to enter the profession who have not met our requirements for character and suitability or technical knowledge and skills. But it does reduce the cost of qualifying for the individual, and the regulatory burden is removed for those who ultimately are unable to achieve admission via this route.

### **Consultation questions**

2. **Do you agree with the proposal that we no longer require a check on character and suitability as a requirement to sit the assessment, provided that we retain the check at admission and we provide an opportunity to candidates to seek an early assessment if they wish?**
3. **Do you agree that in order to achieve parity between European candidates and International candidates we should no longer rely on the QLTS assessment as a means of ensuring that an appropriate level of English language skills has been achieved?**
4. **Do you agree that we should remove the five year restriction on completing the entire suite of QLTS assessments?**
5. **Do you agree that we should no longer restrict applicants to a maximum of three assessment attempts?**
6. **Are there adverse impacts or risks to the public interest in removing these requirements that we have not identified?**

### ***Proposal 3 - remove the requirement on individual solicitors to undertake Management Course Stage 1***

#### **What was the original purpose of the regulation?**

20. The requirement for all solicitors to undertake Management Course Stage 1 (MCS1) within the first three years of qualification was introduced to provide some compulsory training focused on business skills for all solicitors.

#### **Why are we recommending the change?**

21. We are now proposing to remove this requirement because we consider it places an unnecessary regulatory and cost burden on individual solicitors and entities. Our reasons are outlined below.
- MCS1 is a blanket requirement on all newly qualified solicitors and was introduced to provide all solicitors with a basic understanding of management. The course as structured gives only a very high level of awareness of management issues and may be inadequate for those who wish to set up on their own or irrelevant for those who do not. Indeed, we have received feedback that many solicitors have no desire to pursue a management position or that the requirement to undertake MCS1 comes too early in their career to be of any practical benefit.
  - We know that many regulated entities already have comprehensive learning and development programmes in place that ensure that employees are competent to perform their role. MCS1 is considered difficult to accommodate within programmes that focus on roles and the career progression of individual solicitors.

- The prescriptive requirement of MCS1 is inconsistent with our new approach to ensuring the ongoing competence of individual solicitors. This approach provides freedom and flexibility for individual solicitors to identify and determine how they meet training needs. Continuing to require individual solicitors to undertake MCS1 reduces this freedom and flexibility.
22. Attendance at an MCS1 course can cost between £150-£450. The cost can be covered either by the individual solicitor or by their employer. Removing the requirement will remove this financial burden for solicitors and their employers. This proposal will impact on the 75 providers of MCS1 currently authorised by the SRA. We will contact these providers directly regarding their authorisation if a decision is taken to remove this requirement.
23. We have carried out an initial Equality Impact Assessment. This has not identified any adverse impacts.

### **Consultation question 7**

**Do you foresee any impacts, positive or negative from the proposal to remove the requirement to undertake MCS1?**

# [draft] SRA Qualified Lawyers Transfer Scheme Regulations 2011

## Introduction to the Qualified Lawyers Transfer Scheme Regulations

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### Preamble

**Authority:** Made on 17 June 2011 by the Solicitors Regulation Authority Board under sections 2, 79 and 80 of the Solicitors Act 1974 with the approval of the Legal Services Board under paragraph 19 of Schedule 4 to the Legal Services Act 2007

**Date:** These regulations came into force on 6 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.

### Overview

Outcomes-focused regulation concentrates on providing positive outcomes which when achieved will benefit and protect *clients* and the public. These regulations set out the outcomes-focused requirements governing the qualification process for lawyers seeking to be admitted as *solicitors* via transfer from another jurisdiction or *barristers*. 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

These regulations form part of the Handbook, in which the 10 mandatory *Principles* are all-pervasive. They apply to all those *we* regulate and underpin all aspects of practice. Outcomes relevant to lawyers transferring from another jurisdiction are listed beneath the *Principles*.

*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 or 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 or carry out *your* role in the business in a way that encourages equality of opportunity and respect for diversity; and
- 10 protect *client money* and *assets*.

## Outcomes

The outcomes which apply to these regulations are that if *you* qualify as a *solicitor* by transfer from another jurisdiction, *you*:

- O(QR1) have achieved an appropriate standard of competence;
- O(QR2) undergo objective assessment to demonstrate this competence;
- O(QR3) are of proper *character and suitability*;
- O(QR4) have achieved an appropriate standard of written and spoken English or Welsh;
- O(QR5) maintain competence through relevant ongoing training; and
- O(QR6) act so that *clients*, and the wider public, will have confidence that O(QR1) - O(QR5) have 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.

## Part 1: Interpretation and eligibility

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### Regulation 1: Interpretation and definitions

- 1.1 The SRA Handbook Glossary 2012 shall apply and, unless the context otherwise requires:
  - (a) all italicised terms shall be defined; and
  - (b) all terms shall be interpreted;



in accordance with the *Glossary*.

## Regulation 2: Eligibility for admission

- 2.1 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**:
- (a) are a **qualified lawyer** in a **recognised jurisdiction**;
  - (b) have followed the **full route to qualification** in the **recognised jurisdiction**;
  - (c) are **entitled to practise** as a **qualified lawyer** of the **recognised jurisdiction**;
  - (d) are of the **character and suitability** to be admitted as a **solicitor**; and
  - (e) have passed all **QLTS assessments** subject to any exemptions **we** may agree.
- 2.2 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(b) above.
- 2.3 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(b) above.
- 2.4 Where regulation 3.3 applies, if **we** are satisfied that **you** are eligible, and **we** have determined that **you** do not need to take any of the **QLTS assessments**, then **you** may proceed to admission.
- 2.5 These regulations apply to **qualified lawyers** seeking to be admitted as **solicitors** via transfer from another jurisdiction or **barristers**. Such individuals are not eligible to qualify under the **SRA Training Regulations**.

## Part 2: Assessments, recognised jurisdictions and qualified lawyers

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### Regulation 3: QLTS assessments

- 3.1 **We** shall:
- (a) publish guidelines and outcomes in relation to the **QLTS assessment**,
  - (b) validate and authorise the provision of the **QLTS assessments** by the **assessment organisation**, and

- (c) monitor the provision of the *QLTS assessments* by the *assessment organisation*.
- 3.2 Subject to regulation 3.4 below, *international lawyers* must pass all the *QLTS assessments*.
- 3.3 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.
- 3.4 Any applicant who has passed the *LPC* is eligible to apply for an exemption from Part 1 of the *QLTS assessments*.

#### **Regulation 4: Review of lists of recognised jurisdictions and qualified lawyers**

- 4.1 *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.
- 4.2 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*.

#### **Regulation 5: Lawyers seeking admission under the Establishment Directive**

- 5.1 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:
  - (a) satisfied the nationality requirements set out in the legislation; and
  - (b) satisfied *our* registration requirements; and either
  - (c) 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
  - (d) 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*.

## Part 3: Appeals, and suitability

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### Regulation 6: Review of decisions on eligibility

6.1 Subject to regulation 4.2, if **you** seek to establish eligibility under regulations 2 or 5 **you** may, within one month of receiving notification from **us** of any decision under those regulations, ask for the application to be reviewed.

6.2 Where **you** are seeking to establish eligibility (other than pursuant to Directive 2005/36/EC or the *Establishment Directive*) and **we** have:

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

**you** have the right, within three months of receiving notification or deemed notification from **us** of **our** decision on the review, to appeal to the High Court under regulation 3 of the *SRA Admission Regulations*.

6.3 Where **you** are seeking to establish eligibility pursuant to Directive 2005/36/EC and **we** make a decision in respect of that application **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.

6.4 Where **you** are seeking to establish eligibility pursuant to the *Establishment Directive* and **we**:

- (a) fail to take a decision on the initial application and notify it to **you** within four months of receipt of all the relevant documents;
- (b) refuse the initial application; or
- (c) 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.

#### Guidance note

- (i) Deemed notification in regulation 6 is:
  - (a) the date on which the communication is delivered to or left at **your** last notified address or is sent electronically to **your** last notified email address or fax number;
  - (b) for recipients in the EEA or Switzerland, seven days after the communication has been sent by post or

document exchange to **your** last notified contact address; or

- (c) or recipients outside the EEA or Switzerland, 14 days after the communication has been sent by post or document exchange to **your** last notified contact address.

## Regulation 7: Character and suitability of prospective solicitors

- 7.1 As required by regulation 2.1(d), **you** must satisfy **us** as to **your character and suitability** to be a **solicitor** before **we** admit **you** to the roll.
- 7.2 **You** must apply to **us** for admission in writing in the **prescribed** form and support **your** application with such evidence as **we** consider necessary.
- 7.3 **You** may ask **us** to assess any issue which may cause **you** not to meet the outcomes of the **SRA Suitability Test** before commencement of the **QLTS assessments**. Such determinations will not prejudice **our** ability to take all relevant factors into account when a subsequent admission decision is taken, including the facts giving rise to the earlier determination.
- 7.4 **We** may determine on the grounds of **your character and suitability** that **you** are not eligible for admission, and refuse **your** application. **You** may make up to three further applications for eligibility to be admitted where there has been a material change in circumstances after intervals of not less than 12 months from the final determination of **your** previous application.
- 7.5 **You** have the right to appeal to the High Court under regulation 3 of the **SRA Admission Regulations** against **our** decision to refuse to admit **you** as a **solicitor** on the ground of suitability.

### Guidance note

- (i) For further information please consult the **SRA Suitability Test**.

## Part 4: Forms, fees and admission

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### Regulation 8: Forms and fees

- 8.1 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.
- 8.2 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.

- 8.3 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.
- 8.4 **We** may require:
- (a) **your** application to be supported by such evidence as **we** consider necessary;
  - (b) facts relevant to **your** application to be accompanied by statutory declaration; and
  - (c) **your** attendance for an interview.
- 8.5 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)**.

### **Regulation 9: Admission as a solicitor**

- 9.1 Admission as a **solicitor** takes place under Part 3 of the **SRA Admission Regulations**.

## **Part 5: Transition from previous regulations**

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### **Regulation 10: Commencement and repeal**

- 10.1 The **QLTSR** 2010 came into force on 1 September 2010. On this date the **QLTR** 2009 ceased to have effect for new applications. The **QLTR** will continue in force for:
- (a) candidates holding valid **QLTR certificates of eligibility**; or
  - (b) candidates who have submitted an application for a **QLTR certificate of eligibility** prior to 1 September 2010; and
  - (c) those candidates that fall within regulation 11.3 below.

### **Regulation 11: Transitional arrangements**

- 11.1 On 1 September 2010, **we** ceased to issue **QLTR certificates of eligibility** and instead began issuing **QLTS certificates of eligibility**.
- 11.2 The **QLTT** will continue to be available until the expiry of all **QLTR certificates of eligibility**.
- 11.3 If **you** have commenced the Bar Vocational Course after 1 August 2009 and before the commencement of these regulations on a part-time basis, your application for a **certificate of eligibility** shall be treated as if it were made under the **QLTR** provided that **you** have successfully completed the Bar Vocational Course:
- (a) prior to 31 August 2011; or

- (b) if *we*, in the exercise of *our* discretion, determine that *your* circumstances are exceptional, such later date as *we* determine shall apply.