

(Version 1: 4 March 2014)

Guidance on regulatory arrangements for education and training issued under section 162 of the Legal Services Act 2007

The provision of guidance

1. Section 162 of the Legal Services Act 2007 (the Act) allows the Legal Services Board (the LSB) to give guidance:
 - About the operation of the Act and any order made under it
 - About the operation of any rules made by the Board under the Act
 - About any matter relating to the functions of the LSB
 - For the purpose of meeting the regulatory objectives
 - About the content of licensing rules
 - About any other matters about which it appears to the LSB to be desirable to give guidance
2. Guidance under section 162 may consist of such information and advice as the LSB considers is appropriate. The LSB will have regard to the extent to which an approved regulator has taken into account guidance when exercising its functions.

Purpose of this document

3. This document sets out the LSB's guidance to approved regulators on their regulatory arrangements for education and training. It is aimed at existing approved regulators and those applying to the LSB for designation as an approved regulator or licensing authority.
4. We expect all regulators to be considering the evidence and recommendations contained within the Legal Education and Training Review and to complete a review of their regulatory arrangements for education and training. This guidance sets out the principles that we expect approved regulators to take account of in that review. Any approved regulator that departs from our guidance must justify doing so with explicit reference to the regulatory objectives and better regulation principles supporting such departure.
5. The LSB considers that the information provided here gives sufficient clarity as to the outcomes to be delivered, while allowing an appropriate degree of discretion for approved regulators to decide how best they can be secured, their relative priorities and an appropriate timeframe.

Our approach

6. Under the Act the LSB has two important oversight responsibilities. Under section 3 of the Act it is the LSB's duty to promote the regulatory objectives and to have regard to the better regulation principles. Under Section 4 the LSB must 'assist in the maintenance and development of standards in relation to the regulation by approved regulators of persons authorised by the approved regulator to carry on activities which are reserved legal activities' and 'the education and training of persons so authorised'. This provision allows (and indeed imposes a positive duty on) the LSB to take action to help in the development of regulatory standards and specifically education and training.
7. Education and training is one of a number of tools available to regulators to manage risk and support the delivery of the regulatory objectives set out in the Act. This has particular relevance to the need to protect and promote the interests of consumers and to encourage an independent, strong, diverse and effective legal profession. Regulators must also act in accordance with the better regulation principles.
8. In our regulatory standards framework the LSB has set out clear criteria for how regulation needs to change:
 - An outcomes-driven approach to regulation that gives the correct incentives for ethical behaviour and has effect right across the increasingly plural and diverse market
 - A robust understanding of the risks to consumers associated with legal practice and the ability to profile the regulated community according to the level of risk
 - Supervision of the regulated community at entity and individual level according to the risk presented
 - A compliance and enforcement approach that deters and punishes appropriately
9. This framework does not explicitly cover education and training requirements but, as with all regulatory tools, we see a need for regulators to take a risk based and outcomes approach in this area. This is supported by the recommendations within the LETR and is reflected within this guidance.

Outcomes

10. Over time we expect regulators to have in place regulatory arrangements for education and training that deliver the following outcomes:
 - Education and training requirements focus on what an individual must know, understand and be able to do at the point of authorisation
 - Providers of education and training have the flexibility to determine how to deliver training, education and experience that meets the outcomes required

- Standards are set that find the right balance between what is required at the point of authorisation and what can be fulfilled through ongoing competency¹ requirements
- Regulators successfully balance obligations for education and training between the individual and the entity both at the point of entry and on an ongoing basis
- Regulators place no inappropriate direct or indirect restrictions on the numbers entering the profession

11. While we believe the outcomes stand independently, our guidance sets out our views on how they might best be achieved. In order to ensure coherence across the objectives, regulators should consider all of the objectives together and not in isolation from each other.

Outcome 1: *Education and training requirements focus on what an individual must know, understand and be able to do at the point of authorisation*

- Requirements may be role or activity specific, with certain universal requirements being consistent regardless of regulator. These universal requirements may focus on areas such as professional principles and ethics
- Regulators move away from ‘time served’ models that focus predominantly on inputs rather than outcomes as a default position
- Requirements exist only where needed to mitigate risks posed by the provision of a legal activity. We would therefore expect regulators to review their approach to the regulation of students. It is difficult to see how the regulatory burdens and costs involved can be justified when students are acting under the supervision of a qualified person and in many cases within a regulated entity
- Regulators act to facilitate easier movement between the professions, during training, at the point of qualification and beyond
- Regulators review requirements regularly to ensure that education and training stays current and relevant to modern practice

Outcome 2: *Providers of education and training have the flexibility to determine how to deliver training, education and experience which meets the outcomes required*

- Approval of education and training routes is dependent on providers’ ability to demonstrate how their approach enables candidates to achieve the required outcomes

¹ By competency we mean the minimum skills, knowledge and behaviours that are required to satisfactorily provide authorised legal services in a manner that is compliant with existing rules and regulations of practice.

- b. Regulators take care not to predetermine approval by prescribing particular routes
- c. Multiple routes to authorisation are able to emerge, with no one route being the 'gold standard'²
- d. Approval processes for new routes to authorisation support providers in their delivery of the required education and training outcomes and do not put in place unnecessary obstacles (for example, not requiring burdensome authorisation and reporting requirements, repeated waivers or exemptions from regulators)
- e. Regulators complement rather than duplicate existing quality assurance processes such as those undertaken by higher education institutions themselves and those carried out by the Quality Assurance Agency (QAA). We would expect all regulators to undertake a review of their existing quality assurance processes to identify where changes can be made

Outcome 3: *Standards are set that find the right balance between what is required at the point of authorisation and what can be fulfilled through ongoing competency requirements*

- a. Education and training requirements should be set at the minimum level at which an individual is deemed competent for the activity or activities they are authorised to do
- b. Requirements beyond the minimum are only in place where they can be justified by the risks. We would expect regulators to review all available evidence to determine the likelihood of the risk occurring and to monitor the impact of any requirements over time. This may lead to an ongoing review cycle with strong links to regulatory supervision functions
- c. The balance between initial and ongoing requirements for education and training should be determined in accordance with the risks posed by that activity
- d. Regulators should consider whether broad based knowledge of all areas of law needs to be a prerequisite for authorisation in all areas. For example, there may be areas where the risks allow for authorisation in a specific activity and a broad base of knowledge is not necessary
- e. On the job training is utilised where knowledge can be obtained effectively in this way rather than requiring all knowledge to be obtained before authorisation

² 'Gold standard' refers to any route that meets the prescribed outcome and is considered preferable to the other available routes

- f. Continuing Professional Development (CPD) participants are required to plan, implement, evaluate and reflect annually on their training needs. A robust approach to monitoring is developed and aligned or integrated with existing supervision functions
- g. Regulators are risk based in relation to reaccreditation and make a clear assessment about its use. Significant risk based requirements at the point of authorisation are likely to indicate sufficient risk to require some form of reaccreditation. However, this does not mean that wherever there is an initial requirement this must be duplicated at a later date.

Outcome 4: *Regulators successfully balance obligations for education and training between the individual and the entity both at the point of entry and ongoing*

- a. Regulators move towards obtaining assurance from entities that day-to-day competency requirements are being met. This means a shift away from low risk decisions (e.g. about staff secondments) being made by regulators themselves
- b. When authorising an entity to provide reserved legal activities, regulators focus on ensuring the appropriate controls and supervision arrangements are in place to ensure the competence of all those employed to provide legal services and not only those with professional titles. For the avoidance of doubt, we do not see that a licensing regime for individual paralegals is needed in the context of entity regulation
- c. The systems and processes required of entities vary depending on the business model or nature of the services provided, and to whom services are provided. For example, we would expect regulators to take account of the proportion of reserved and unreserved services being provided

Outcome 5: *Regulators place no inappropriate direct or indirect restrictions on the numbers entering the profession*

- a. Regulatory arrangements promote competition and the interests of consumers through the availability of a range of qualification options
- b. Regulators should not impose limits on numbers entering the profession either directly or indirectly (for example by restricting places on vocational training courses to those that have successfully obtained a pupillage or training contract)
- c. Any education and training requirements are sufficiently flexible to meet the needs of a developing market, enabling businesses to make decisions about who they employ

Timetable

12. Given the complexity and importance of education and training, and the need to balance other priorities, it is not for the LSB to set the timetable for this process. However, given the time taken to get to this point we wish to ensure that momentum generated by the LETR is not lost.
13. The LSB will adopt a flexible approach to monitoring regulators' progress. We intend to contact regulators over the coming months to discuss with them their approach to and timetable for the review of their regulatory arrangements. We will also discuss how we might monitor their progress going forward.
14. Regulators that have clear plans in broad accord with the guidance which they are making progress against will be left to continue. However, statutory guidance provides a clear basis for the LSB to seek explanation and take necessary action if any approved regulators do not deliver.