

Full impact assessment

Qualified Lawyers Transfer Scheme

Business unit: Education and Training Unit

Date: November 2009 (updated March 2010)

Glossary

Day One Outcomes are the outcomes which all lawyers are expected to have met at the point of qualification (www.sra.org.uk/securedownload/file/229)

Qualified Lawyer is a legal qualification which satisfies the criteria set out in the update to paragraph 4

Qualified Lawyers Transfer Test (QLTT) means the tests which some lawyers are required to pass under the Qualified Lawyers Transfer Regulations 1990 and 2009

Qualified Lawyers Transfer Regulations (QLTR) means the Qualified Lawyers Transfer Regulations 1990 and 2009

Qualified Lawyers Transfer Scheme (QLTS) is the scheme that will replace the QLTR and QLTT

Recognised Jurisdiction is a jurisdiction which satisfies the criteria set out in paragraph 4

PART 1 – Overview

The policy as a whole deals with the regulatory requirements to provide international lawyers with a "fast-track" route to admission as a solicitor of England and Wales as an alternative to the domestic route.

Current regulatory requirements

The Qualified Lawyers Transfer Test (QLTT) route to qualification is currently available to people who are qualified as lawyers in, and are citizens of, EU member states, together with lawyers who have qualified in a number of named jurisdictions in which the legal system is based on the common law and to barristers, solicitors and advocates qualified in England and Wales, Scotland and Northern Ireland.

People who are eligible to qualify in this way are required to pass between one and four of the examinations that make up the QLTT, unless they are granted a total exemption from all exams. UK and international (non-EU) applicants are also required to satisfy an experience requirement of up to two years.

The subjects which make up the QLTT are

- Professional conduct and accounts,
- Litigation,
- Property, and
- Principles of Common Law.

Aims and objectives

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 (RELs), registered foreign lawyers (RFLs) or under the title of their home jurisdiction. It is also possible for them to requalify through the domestic route. 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.

The primary focus of this scheme is to establish parity with the domestic route to qualification. All applicants will be assessed against the same set of standards and, unless they are granted any exemptions from individual assessments by virtue of EU legislation or because they have qualified within the UK, will be required to take the same assessments.

As this is a new scheme with new mechanisms for recognising jurisdictions and new means of assessment, we will not know how the new proposals will impact on various groups. This is therefore an equality impact assessment (EIA) where we have tried to identify potential impact. We will put in a robust monitoring mechanism to help us assess any adverse impact of the scheme. We have also consulted widely, and considered the feedback we have received in this EIA.

The aims of the policy are

- to provide assurance to consumers and other stakeholders that solicitors who have been admitted via the transfer route have been assessed as competent to practise,
- to protect the client and public interest, and
- to ensure the effective administration of justice and the rule of law.

The objectives are to introduce a transfer scheme that

- is based on the same standards of knowledge, skills and ability that are required of those who follow the domestic route to qualification,
- is based on the same test of character and suitability that is used to assess those following the domestic route to qualification,
- recognises that qualified lawyers who are eligible to apply under the transfer scheme should have already demonstrated by way of their home qualification scheme the core knowledge and skills needed of all lawyers,
- assesses the ability of applicants to apply their knowledge and skills in the context of English/Welsh law and legal practice,

- is open to lawyers qualified in a larger number and wider range of jurisdictions than is currently the case,
- recognises the obligations on members of the World Trade Organisation (WTO) to afford no less favourable treatment to some WTO members than others, and
- recognises the obligations on EU member states to facilitate the free movement of individual citizens
- offers a fair and transparent system for qualified lawyers to apply for full practising rights free from unlawful discrimination

How are these objectives achieved?

- Through the setting of assessments to test the competence of candidates against the same Day One Outcomes as domestic applicants are assessed against prior to qualification
- Through the abolition of exemptions from particular assessments (although specific requirements will apply to EU and intra-UK lawyers)
- By contracting with one third-party assessment provider to provide assessments and the quality assurance by the SRA of this provider
- By working with other parts of the SRA to ensure that the character and suitability checks are robust and equivalent to those conducted prior to admission via the domestic route. The SRA's role in carrying out character and suitability checks is to ensure that an individual admitted as a solicitor has the level of honesty, integrity and professionalism expected by the public and other stakeholders, as well as other members of the profession, and does not pose a risk to the public or the profession.

Who are the key stakeholders?

- All international lawyers, barristers from England and Wales, and UK lawyers who want to become admitted as a solicitor of England and Wales and their employers, or potential employers.
- Consumers of legal Services
- Providers of QLTT assessments and potential providers of QLTS assessments
- General public

Consultation with stakeholders

There was a formal [consultation](#) which ran for just over 12 weeks from November 2008 to February 2009. We consulted on each of the proposals set out in detail below.

The consultation was published on the SRA website for a period of 12 weeks and was sent directly to key contacts at a range of equality groups and to key stakeholders including the Law Society and the Bar Standards Board. In addition around 2000 stakeholders who have registered to be alerted to consultations were emailed to notify them of the consultation.

The consultation included a specific question on the potential equality impact of the proposals to inform the development of the equality impact assessment.

There were 39 responses to the consultation. The respondents included the Law Societies of England and Wales, Scotland and Northern Ireland, the Law Society of Ireland, the Law Council of Australia, local law societies, the Legal Services Commission, the Junior Lawyers Division, training organisations and a range of firms and individuals. We have received comments from some equality groups, including the SRA's External Implementation Group (made of representatives of black and minority ethnic groups) and the Society of Asian Lawyers. The issues and concerns raised in the consultation are dealt with below.

Update

We have made further contact with the Association of Women Solicitors and have met with the Lawyers with Disability Division and Lord Ouseley's External Implementation Group to gain their input into the scheme.

A further consultation on the draft Regulations took place from December 2009-January 2010 to ensure there were no inadvertent consequences of translating the policy into regulations. Again, the consultation was sent to representative groups representing the equality groups.

PART 2 – Proposed regulatory requirements

The proposed new scheme is objective, consistent and transparent. The scheme should enable the SRA to promote equality within the profession by opening the transfer scheme to applicants from a wider range of jurisdictions and by having a universal scheme of assessments which applicants will need to complete. Once the proposals are implemented, we will assess the impact of the scheme at each stage of development and monitor the impact of the scheme on new applicants during the first 12 months.

We have carefully considered the consultation responses in relation to each of the proposals and these are set out in more detail in the [summary of responses](#).

The main issues arising from this equality impact assessment relate to race, disability and age equality, and the impact section for each of the proposals set out below specifies in which equality area the impact has been identified. We have set out our findings in relation to the other equality areas separately and the end of this section.

1. Day One Outcomes

Proposal

The benchmark against which transferees should be assessed is the same as that applied to individuals at the time that they initially qualify under the domestic route to qualification, the Day One Outcomes. As some aspects of the Day One Outcomes can be assumed of all lawyers (i.e. intellectual, analytical and problem-solving skills¹, and personal development and work management skills²), this means that all International Lawyer applicants will be tested on

- all the knowledge outcomes,
- solicitors' accounts, professional conduct, financial regulation
- property and probate
- litigation
- business law and practice
- contract and tort
- the English legal system, incorporating equitable rights, human rights and EU law
- transactional and dispute resolution skills,
- legal, professional and client relationship skills, and
- professional values, behaviours, attitudes and ethics.

All lawyers applying under the EU Directives or because they are UK Lawyers will be individually assessed to ascertain which of these outcomes they have already met.

Data considered

- Consultation responses

Impact

Under the QLTR lawyers from certain (mainly Commonwealth) jurisdictions were exempt from some of the subjects. There will no longer be any exemptions available for non-EEA lawyers

Justification

See paragraph 10 below.

2. Revised Character and Suitability tests

¹ Day One Outcome B

² Day One Outcome E

Proposal

In the 2008 consultation it was proposed to have character and suitability requirements which would

- require references from people who can comment objectively on an applicant's standing,
- require certificates of good standing from the applicant's home professional/regulatory body,
- require disclosure from UK's Criminal Records Bureau (CRB) where possible,
- where possible and appropriate, disclosure from CRB equivalent bodies in other jurisdictions,
- vary nature of evidence required according to where applicant lives and works and the availability of independent evidence of their character and suitability.

Update

Updated character and suitability guidelines will be published in Spring 2010 to incorporate existing case law into the current guidelines. This will ensure transparency for all applicants. The guidelines will be the same for domestic and international applicants. The evidence required to demonstrate whether or not the character and suitability requirements have been satisfied will be adapted according to the qualifying jurisdiction.

Impact

The issue of character and suitability as a whole is currently being reviewed by the SRA in 2010. The impact of any revisions will be subject to a separate equality impact assessment.

3. Eligibility to apply

Proposal

To apply applicants must be entitled to practise and have followed the full route to qualification in the jurisdiction on which they are basing their application.

Update

Applicants need not base their application on their first professional legal qualification. Applicants will however need to provide Certificates of Good Standing from every jurisdiction in which they have qualified.

Data considered

- Consultation responses
- 2008 motivation survey (see Annex 1)
- Bar Standards Board statistics

Impact

Bar Vocational Course (BVC)/Bar Professional Training Course (BPTC)³ graduates were previously able to use the QLTR route to transfer into the solicitor profession (without being required to complete their qualification as a barrister). The proposal to require QLTT applicants to have completed their qualification and be entitled to practice, will disadvantage BVC graduates, making the option of qualifying as a solicitor less accessible.

The data suggests that black and minority ethnic (BME) students who have completed the (BVC) are less likely to qualify as a barrister because they are less likely to obtain a pupillage than their White counterparts. The proposal is therefore likely to have a disproportionate adverse impact on BME graduates of the BVC.

Update

The ability to apply on the basis of subsequent qualifications (as opposed to the only the first qualification as with the QLTR) will have a positive impact on those who would otherwise be prevented from applying by virtue of their first qualification not being recognised.

Justification

The SRA has considered that the adverse impact on BVC/BPTC graduates can be justified, as the route in to the profession for BVC graduates was a 'loophole' which undermines the ability of the SRA to ensure the requisite standard of entry to the profession and undermines the validity of the scheme as whole as it is not in the public interest to give unqualified people a route to qualification which is normally reserved for qualified lawyers.

Mitigation

Although the adverse impact identified for BME graduates of the BVC/BPTC is primarily an issue for the Bar, the SRA wishes to avoid compounding any potential disadvantage faced by BVC/BPTC graduates. As part of the reforms to our domestic qualification, the SRA has agreed in principle that exemptions

³ The Bar Vocational Course (BVC) is being replaced with the Bar Professional Training Course (BPTC).

to the Legal Practice Course (LPC), although not the LPC assessments, should be considered. Work has commenced on this and will be completed in time for the implementation of the QLTS.

4. Recognised jurisdiction approach

Proposal

The scheme will be accessible to Qualified Lawyers from a much larger number of countries than is currently the case under the QLTR where eligibility is largely restricted to Commonwealth countries. Eligibility will be granted to regulated lawyers with a professional role broadly similar to that of a solicitor. This means that candidates must satisfy two sets of criteria to be Qualified Lawyers in a Recognised Jurisdiction.

We will be reviewing the jurisdictions from which the QLTT applicants are applying against set criteria. Once we have determined that the jurisdiction should be recognised, we will accept applications from qualified lawyers for that jurisdiction. We are proposing to review the decisions to recognise a jurisdiction every 5 years or whenever written evidence is received which suggests the need for a jurisdiction or qualification to be reviewed.

The criteria for assessing whether a jurisdiction should be recognised are:

- professional qualification requires completion of specific education and training at a level that is at least equivalent to that of an English/Welsh degree,
- members of the profession are bound by an ethical code that requires them to act without conflicts of interest and to respect their clients' interests and confidentiality,
- members of the profession are subject to disciplinary sanctions for breach of their ethical code, including the removal of the right to practise.

Update

The criteria for assessing whether a legal qualification should be included in the list of Qualified Lawyers are legal qualifications which:

- on qualification give the lawyer rights of audience
- makes the lawyer an officer of the court
- prior to admission require the lawyer to have completed a generalist (non-specialised) legal education and training

Impact

Decisions not to recognise legal qualifications from a particular jurisdiction would not be directly discriminatory on racial grounds (because jurisdiction is not synonymous with race). However it could be indirectly discriminatory if it were not justified, ie a proportionate means of achieving a legitimate aim.

Data considered

- Consultation responses
- Feedback from meeting of Lord Ouseley's External Implementation Group

There is no statistical data available as we do not know which jurisdictions would meet the criteria.

Alternatives

The possibility of having a "no-restrictions" approach or eligibility based on World Trade Organisation (WTO) membership was considered and rejected because the role of lawyers in jurisdictions which do not meet the recognised jurisdiction criteria are not sufficiently similar to the role of the solicitor in England and Wales to make the transfer route open to them. WTO membership does not mean that members' legal systems have been assessed or that there is any comparability with the legal regulatory system in England and Wales.

We have also considered whether applicants from jurisdictions which have not been recognised should be given the right to 'appeal' by pleading special circumstances. We rejected this proposition for the reasons explained in paragraph 6 below.

Justification

The SRA is satisfied that this approach is justified for the following reasons.

- The proposed QLTS assessments alone are insufficient for the SRA to ascertain whether the experience and training applicants had acquired was sufficiently similar to that of an English solicitor to justify admission via a "fast-track" route.
- Evidence of good standing from the home jurisdiction has no credibility unless the SRA can have confidence in the home jurisdiction's regulatory system.
- If no regard is had to the qualification/regulatory regime then access to the scheme may be given to people who might not be regarded as lawyers at all. This would also undermine the domestic route to qualification as parity of standards would not be established.
- As explained in paragraph 3 above, applicants will not be bound to apply on the basis of the jurisdiction in which they gained their first legal qualification, which offers applicants a degree of flexibility

- Those from jurisdictions excluded by the criteria can gain admission via domestic route.

The SRA is committed to monitoring the impact of the scheme (see paragraph 6, Impact, below).

5. Phased approach

Proposal

Update

The original proposal was for there to be a phased approach to considering whether jurisdictions should be recognised. It is now proposed that international bars and law societies will be surveyed early in 2010 and that the SRA will consider jurisdictions as and when responses are received. It is proposed that bars and law societies will be approached via the Law Society's International Division and that bars/law societies will be encouraged to complete the survey online to encourage a swift response.

Data considered

- Consultation responses
- Data on jurisdictions where current applicants come from (however the new scheme will be open to new jurisdictions which do not feature in this data)
- List of Priority Jurisdictions produced with the International Division of the Law Society

Impact

As we have decided to review the jurisdictions as and when the applications are received, we will not have to be identifying specific groups of applicants whose applications will have to wait until their jurisdiction has been considered. There will be some delay as we consider the jurisdictions but this will be spread across all applicants and there will therefore not be any disproportionate race equality impact on any particular group of applicants.

6. Rights of appeal

Proposal

There should be no provision for individuals qualified in jurisdictions that do not satisfy the criteria for recognition to make a special case to be allowed to apply i.e. appeal.

There should be a mechanism in place to review decisions as to whether or not a jurisdiction satisfies the requirements.

Clarification

The existing right of applicants to request a review of a decision made by the SRA to refuse to issue a certificate of eligibility is replicated in QLTS Regulation 5. Regulation 5 relates to an individual's rights e.g. in relation to character and suitability issues, rather than whether a jurisdiction is recognised.

The process for reviewing the lists of Recognised Jurisdiction and Qualified Lawyers, based on the open and transparent criteria set out in paragraph 4 above, is set out in QLTS Regulation 3 and will take place every 5 years or whenever evidence is provided which suggests the need for the list to be reviewed.

Impact

The SRA cannot determine impact at this time as this proposal is dependent on the results of the international survey to be conducted by the SRA. The SRA will monitor the jurisdictions which were eligible under the old scheme and those eligible under the new scheme and assess the impact of the proposal to introduce the system for recognising jurisdiction without providing for individual appeals.

7. Practical assessments

Proposal

Introduction of practical assessments to test transactional and dispute resolution skills and legal, professional and client relationship knowledge and skills, professional values, behaviours, attitudes and ethics.

Impact

The practical assessments will be designed to incorporate a very high level of objectivity. This will serve to minimise any possible discrimination.

The new assessment methods could potentially present particular difficulties, for example, for those with disabilities or for older applicants who have not taken assessments for a significant number of years or have not encountered practical assessment previously.

Data considered

- Consultation responses
- Data on current QLTT lawyers
- 2008 motivation survey
- Benchmarking of other regulators (see Annex 2)
- Meeting with assessment organisations

An exploratory visit to the General Medical Council's assessment centre has taken place to learn more about their Objective Structured Clinical Examinations (OSCEs) and further benchmarking work has taken place of other regulators who use this sort of assessment tool.

The data available shows that there is a small number of practising QLTT transferees who have notified the SRA of their disability. Over half of practising QLTT transferees are between the ages of 31 and 40, and 88% were under 40 on admission, which might suggest that they are more likely to have completed formal assessments in the recent past. Fourteen practising solicitors who were admitted through the QLTT route have notified the SRA that they have a disability (as at 29 June 2009). Further statistics are in Part 3. This data is confirmed by the results of the motivation survey (Annex 1).

Alternatives

Further written assessments have been rejected because practical skills cannot be adequately tested in a written assessment. An experience requirement has been rejected because it is difficult to objectively assess varying experience requirements. The SRA considered whether the assessment of professional values, behaviours, attitudes and ethics could be undertaken within an OSCE-style assessment instead of in a structured interview (which was the original proposal), and has concluded that this would make the assessments as whole much more robust and objective.

Mitigation

The identification and resolution of issues for older candidates as well as those with disabilities will be a key issue as the scheme is developed and addressed through the tender process. We have met and will continue to meet with disability and other equality groups well in advance of the scheme's implementation to ensure that any potential problems or adverse impacts are addressed. We will be proactive about encouraging applicants with a disability to apply and will look to best practice in this respect.

We will include key equality and diversity requirements to be met by the successful assessment body. We will monitor the assessment process and outcomes annually to ensure that the assessment process, application and outcomes are fair and objective.

We will ensure that the types of reasonable adjustments that might be made are anticipated as the assessments are designed and developed. We will

ensure that agreement is reached with the assessment body about how requests for reasonable adjustments will be dealt with and how potential disadvantages can be designed out of the assessment arrangements. These issues will be dealt with further as part of the tender and implementation process and as part of our quality assurance mechanism.

Justification

Practical assessments are not new and are widely used by other regulators. The OSCE is, as the name suggests, a robust and objective means of testing and is therefore a means of minimising the risk of discrimination of any sort within the assessment process.

A lack of familiarity with practical assessments can be addressed with practice questions and further information on what to expect in assessments, and this will be discussed and developed when the assessment body is appointed. It is however, in the public interest for a robust set of assessments to be in place which properly and adequately test that applicants are of the requisite standard for admission as a solicitor of England and Wales.

8. English language requirement

Proposal

Applicants will need to demonstrate that they are able to use English with a level of competence sufficient to take accurate instructions from, and give clear and accurate advice to, clients in English, to understand and draft legal documents in English and to exercise rights of audience.

Update

Applicants will need to evidence that they have met the Common European Framework of Reference Level C2 competence in English (which equates to A-level standard).

Candidates will be able to evidence that they have met this level by the following means:

- by passing an English language test at Level C2 through a provider approved by the SRA, within the previous 2 years of the applicant applying for the certificate of eligibility
- by holding a degree assessed by UK NARIC as being taught in English and equivalent to a UK H-Level (e.g. Bachelors) degree
- by holding a 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
- by holding a H-Level (e.g. Bachelors) degree or above from a DCSF recognised UK university

The English language test cannot, as a matter of law, be applied to EEA citizens seeking to work in the UK by virtue of the European Directives which provide free movement rights.

Impact

Those who are unable to evidence that their level of English is at CEFR Level 2, will be unable to proceed to take the QLTS assessments. This is likely to impact on applicants born and/or brought up in a non English speaking country and may constitute indirect race discrimination unless it is justified as a proportionate means of achieving a legitimate aim.

Data considered

- Consultation responses
- Benchmarking of other professions and Higher Education Institutions (see Annex 2)
- Feedback from Lord Ouseley's External Implementation Group
- Specific research prepared by Mandy Gill, Consultant to the SRA

Alternatives

Update

The SRA considered the educational rationale for a pre-requisite assessment of English language as opposed to an integrated assessment of English language i.e. one that was part of the QLTS assessments. The SRA concluded that a pre-requisite test was preferable for the following reasons:

- The QLTS assessments are intended to test the Day One Outcomes i.e. communication skills, as opposed to competence in the English language specifically. For those who have undertaken and passed their higher education in English, the requisite command of the English language can be assumed, but for all others a pre-requisite test is the best way of ensuring English language competence
- The QLTS is a short and intensive set of assessments which will test most of the Day One Outcomes. The assessment provider will therefore not have the opportunity to assess English over a period of time as is the case for courses like the LPC and the Bar Professional Training Course (BPTC) and the ability to test written language skills will be limited.
- It is normal practice in higher education to require candidates to evidence that they have met a particular standard of competence in English before they are admitted to a course
- The need to ensure that English language competence had a significant enough weighting in the marking of the QLTS assessments would mean that the relative importance of other outcomes would be diminished. This is not desirable.
- The writers and assessors of the assessments would need to be experts in English language assessment as well as legal knowledge and skills in order to be able to draft and mark the assessments appropriately. This would be difficult to achieve and the more robust approach is to leave English language assessment to the experts who are experienced at dealing with difficult issues such as accent and colloquialisms.
- If the applicant is aware at the outset that he or she is not of the requisite standard (CEFR Level 2/A-level) then they will save themselves the cost and time of taking the QLTS assessments.

Mitigation

Update

The English language requirement can be evidenced through a number of means (as set out above). These alternatives ensure that our approach to this requirement is proportionate and gives credit for qualifications achieved in higher education outside of the UK.

Candidates will be able to pass the English test at any provider which meets the following criteria and which has therefore been approved by the SRA. English test providers will be approved if:

- Candidates are capable of being tested at CEFR Level C2
- Candidates are tested on reading, writing, listening and speaking ability
- There is a system of independent test report verification (i.e. means by which the SRA can independently check candidates' results against the providers' own records)
- There is ID verification throughout the testing process to ensure the security of its tests and test results including established methods to deal with candidate identity fraud

Justification

Update

Whilst the QLTS assessments will assess a candidate's ability to communicate (as described in the Day One Outcomes), the QLTS assessments will not specifically test English language competence. It is therefore necessary and in the public interest to have alternative means of assessing English language competence.

The SRA has set the requirement at CEFR Level 2 for the following reasons:

- CEFR Level 2 is considered to be equivalent to A-Level standard English. As those coming through the domestic route will all have achieved a qualification which is Bachelors level or above prior to qualification (namely the LPC), this is not an overly high requirement.
- The English language test provider IELTS' guidance on setting their band score requirements for linguistically challenging courses such as law is that a score of IELTS 7 is probably acceptable but that a score of IELTS 7.5-9 is acceptable. IELTS 7.5 is equivalent to CEFR Level 2. The QLTS is the last academic hurdle prior to qualification for QLTS candidates it is therefore appropriate for it to be set at a higher level than for entry onto an undergraduate law course.
- IELTS' description of bands 7 and 8 are:
 - Band 7 - candidate is a good user with operational command of the language and occasional inaccuracies and misunderstandings
 - Band 8 – candidate is a very good user of the language with fully operational command of the language and only occasional mistakes. The candidate handles complex and detailed argumentation well.
- It is in the public interest that a consumer of legal services can assume that his/her solicitor has a command of English at CEFR Level 2.

9. Removal of experience requirement

Proposal

There will no longer be a specific experience requirement.

Transferees without practical experience will find it more difficult to pass the practical assessments which will act as a proxy for practical experience which has been considered in paragraph 7 above.

Impact

None.

10. No exemptions for international lawyers from QLTS written and practical assessments

Proposal

International lawyers will not be given exemptions from any element of the assessments

Impact

By law, the SRA is obliged to give consideration to and credit for the qualifications and experience gained by European Economic Area (EEA) candidates. As a result, EEA candidates may be given exemptions from some of the QLTT assessments whereas international candidates are required to pass all assessments and are not individually assessed on the basis of their actual qualifications and experience.

It may appear that the SRA is unjustifiably treating EEA and non-EEA applicants differently and this was an issue which was raised at the SRA's External Implementation Group. Firstly, the different treatment is prescribed by the law and secondly, in practice most EEA candidates will need to do the same assessments as international candidates. The requirement is not to excuse EEA candidates from having the required qualifications and experiences, but to give them credit for what they already have.

Data considered

- Consultation responses
- Feedback from meeting of Lord Ouseley's External Implementation Group

Justification

One of the core principles of the QLTR review was to develop a scheme based on the same knowledge, skills and ability as required by those who follow the domestic route to qualification. The aim throughout has been to ensure that as many applicants as possible meet the same high standard of entry as those coming through the domestic route.

If the SRA was to decide to assess the qualifications of all international applicants (in the same way as it is required to assess EEA candidates) this

would reduce the rigour of the scheme. Inevitably, when making any comparison of international qualifications there is an element of subjectivity. The SRA needs to be able to reach an objective judgement as to whether an applicant has achieved the Day One Outcomes prior to admission which is why we would wish to avoid making those comparisons without clear justification, and this is best achieved through an all-encompassing assessment scheme.

It should also be noted that although EEA applicants are individually assessed under the current system, it is commonly the case that they are required to take all the assessments as the legal systems in many EEA countries are very different to that of England and Wales.

Exceptions are also made for UK lawyers as set out in section 12 below.

11. EEA requirements

Proposal

EEA lawyers will have their transfer requirements assessed individually. The Day One Outcomes will be used as the benchmark. The aptitude test will be compiled of appropriate elements of the written and practical assessments that form the International lawyers assessment. The assessments will be the same for EEA and non-EEA candidates.

Impact

See 10 above.

Data considered

- Consultation responses
- Feedback from meeting of Lord Ouseley's External Implementation Group

12. UK lawyers

Proposal

UK lawyers will be individually assessed.

Impact

Applicants from some jurisdictions might seek to argue that their legal system is closer or as close to that of England and Wales as Scotland and Northern Ireland and should also be individually assessed. The potential impact would be on international lawyers from countries which have a similar legal system as that in England and Wales.

Again the QLTS approach is determined by the nature of the jurisdiction where the qualification was obtained not the race of the applicant and therefore any potential adverse impact would be indirect.

Data considered

- Consultation responses
- Feedback from meeting held with Law Society of Northern Ireland

Alternatives

Individual assessment of each jurisdiction

Justification

Although individual assessment of all international candidates has been rejected for the reasons set out in 10 above, there is very clear justification in treating UK lawyers differently, namely:

- There is a significant overlap in relevant legislation (For example, all 11 new bills proposed in the 2008/9 Queen's Speech apply to Scotland.).
- There is a significant level of similarity in a number of areas of law. This is more so in Northern Ireland than in Scotland.
- Northern Ireland and Scotland are within the jurisdiction of the new Supreme Court (The Supreme Court (replacing the House of Lords) will be the final court of appeal in the UK for civil cases and will hear appeals in criminal cases from England, Wales and Northern Ireland.).
- Students are permitted to complete their training contracts under the England and Wales domestic route, in Northern Ireland.
- Whilst there are differences in the content of the LPC and BVC, Barristers in England and Wales have studied the same substantive law and procedure as those who have qualified as solicitors in England and Wales.

13. One assessment body

Proposal

Only one assessment body will be appointed. They will not be able to provide QLTS training courses

Impact

Here there could potentially be some positive impact for all equality groups as having one provider will enable the SRA to develop a more comprehensive Quality Assurance framework for the provider to comply with which will include key equality and diversity requirements e.g. avoiding assessment rounds on days of religious importance. The SRA can monitor more closely the process, application and outcomes of the assessment.

Data considered

- Consultation responses
- Feedback received at roundtable meeting of assessment providers

14. Abolish Distinguished Specialist Practitioner and academic lawyer routes

Proposal

Abolish Distinguished Specialist Practitioner and academic lawyer routes

Impact

The data indicates that this could have a potential indirect adverse impact on race equality.

Data considered

- Consultation responses
- The data we hold on applications via this route is not extensive - see tables below.

Number of Distinguished Specialist Practitioners

| | Location |
|-------|----------|
| 1 | Chile |
| 1 | Brazil |
| 2 | US |
| TOTAL | 4 |

Number of Academic Lawyers

| | Location |
|-------|----------|
| 3 | UK |
| TOTAL | 3 |

Justification

These routes for qualification are by their nature likely to involve a very subjective assessment process and given the overall objectives of the new proposals and the fact that so few applications have been received through this route, the SRA would be justified in implementing this aspect of the proposal.

Impact on other strands and human rights

Religion or belief

We recognise that the SRA needs to be sensitive to particular issues surrounding religion or belief, for example, the implications of assessments taking place on days of religious significance. We will also ensure that the

assessment provider for the practical assessments are required, through the contract requirements, to take this into account.

Currently we do not have any comprehensive data on applicants' religion or beliefs. This is something which the SRA is now collecting for the first time and we will be monitoring this in future.

Sexual orientation

We have not encountered any evidence to suggest that the proposed changes would have a differential impact according to the sexual orientation of the applicant.

Currently we do not have any comprehensive data on applicants' sexual orientation. This is something which the SRA is now collecting for the first time and we will be monitoring this in future.

Gender

As at 29 June 2009, 44% of practising QLTT transferees were female⁴. We have not encountered any evidence to suggest that the proposed changes would have a differential impact according to the gender of the applicant. However, we have been in contact with the Association of Women Solicitors to elicit whether they have any particular concerns about the proposals in relation to gender issues.

Anecdotally it is possible that the new QLTS will have a positive impact on female applicants who are more likely to have other e.g. childcare, responsibilities, as the scheme is made up of a compressed suite of assessments, and there is no explicit experience requirement.

If the proposals are implemented we will monitor whether the balance of applications from men and women changes and attempt to assess whether this has any correlation with the introduction of the new scheme.

Human Rights

We have not determined any aspect of these proposals which would interfere with the human rights of the applicants or potential applicants for QLTT.

PART 3 – Generic data on current transferees

As an organisation we have limited data on which to base our assessment of the equality and diversity impact of proposals and this is something which the SRA is seeking to redress via the [diversity census](#). However, equality and diversity (E&D) implications have been taken into account throughout the development of the policy and legal advice has been sought.

⁴ This is comparable with the 45.2% women in the entire practising population. (Law Society's 2009 Annual Statistical Report)

Equality monitoring data

Number of solicitors on the roll with a practising certificate and number that qualified via QLTT

(The route to qualification of those solicitors who were admitted to the roll prior to the introduction of the Regis database is not accurately recorded. Therefore the number of solicitors who qualified via QLTT is potentially larger than shown here)

| Date | All Solicitors on the Roll with PC | QLTT (%) |
|---------------------|------------------------------------|------------|
| 31 st December 2006 | 104,209 | 6,142 5.9% |
| 31 st December 2007 | 107,818 | 6,796 6.3% |
| 31 st December 2008 | 109,952 | 7,586 6.9% |
| 29 th June 2009 | 114,787 | 8,547 7.4% |

| Ethnicity | Non-QLTT | Non-QLTT (%) | QLTT | QLTT (%) | Total | Total (%) |
|-----------|----------|--------------|-------|----------|---------|-----------|
| White | 86,474 | 81% | 2,638 | 31% | 89,112 | 78% |
| Asian | 6,360 | 6% | 356 | 4% | 6,716 | 6% |
| Black | 1,756 | 2% | 207 | 2% | 1,963 | 2% |
| Chinese | 537 | 1% | 217 | 3% | 754 | 1% |
| Mixed | 598 | 1% | 65 | 1% | 663 | 1% |
| Other | 1,747 | 2% | 103 | 1% | 1,850 | 2% |
| Unknown | 8,768 | 8% | 4,961 | 58% | 13,729 | 12% |
| Total | 106,240 | 100% | 8,547 | 100% | 114,787 | 100% |

| Disability | Non-QLTT | Non-QLTT (%) | QLTT | QLTT (%) | Total | Total (%) |
|------------|----------|--------------|-------|----------|---------|-----------|
| Yes | 340 | 0.32% | 14 | 0.16% | 354 | 0% |
| No | 33,492 | 32% | 1,047 | 12% | 34,539 | 30% |
| Unknown | 72,408 | 68% | 7,486 | 88% | 79,894 | 70% |
| Total | 106,240 | 100% | 8,547 | 100% | 114,787 | 100% |

Age at admission to the roll (solicitors admitted since 1st January 2007)

| Age | Non-QLTT | Non-QLTT (%) | QLTT | QLTT (%) | Total | Total (%) |
|-----------|----------|--------------|-------|----------|--------|-----------|
| 22-30 | 11,940 | 82% | 2,263 | 47% | 14,203 | 73% |
| 31-40 | 1,956 | 13% | 1,965 | 41% | 3,921 | 20% |
| 41-50 | 535 | 4% | 439 | 9% | 974 | 5% |
| 51-60 | 73 | 1% | 114 | 2% | 187 | 1% |
| 60+ | 4 | 0% | 20 | 0% | 24 | 0% |
| Not Known | 3 | 0% | 19 | 0% | 22 | 0% |
| Total | 14,511 | 100% | 4,820 | 100% | 19,331 | 100% |

Motivations and experiences questionnaire

The need to understand the motivations for applicants to the QLTR was identified in the earlier equality impact assessment in relation to the proposed interim changes to guidance in August 2008.

Therefore in August 2008, in an effort to improve our understanding about the reasons why so many lawyers apply to be admitted under the QLTR, the SRA sent questionnaires to a selection of individuals who had transferred via the QLTT or were considering transferring. A summary of the results is at **Annex 1**.

Gaps in the data and actions to address these gaps

We do not currently capture data about failed applications, which jurisdiction they have applied from, and why they have not been admitted. This information would enable us to assess whether our policies had a particularly detrimental impact on applicants from particular jurisdictions (although it would only be relevant to the current process and not the future system under the QLTS).

Further work has been identified in the preparation of this equality impact assessment, and this is set out at **Annex 3**.

Annex 1

Summary of responses to questionnaires on transferee's motivations and experiences

Introduction

Little has been known about the reasons why so many lawyers apply to be admitted as solicitors under the provisions of the Qualified Lawyers Transfer Regulations (QLTR). This has affected our ability to assess whether the current transfer scheme is fit for purpose and to evaluate the potential impact of changes to the arrangements.

To improve our understanding of transferees' motivations and to find out whether their expectations are met, the SRA published five short questionnaires for completion by people with different interests in, and experiences of, the transfer arrangements in July 2008.

This is a summary of the survey findings.

The questionnaires

The five questionnaires were targeted at

- barristers qualified in England and Wales who were considering or were in the process of transferring,
- barristers qualified in England and Wales who had completed the transfer process and had been admitted as solicitors,
- other lawyers eligible to transfer who were considering, or in the process of, transferring,
- other lawyers who had completed the transfer process and had been admitted as solicitors, and
- registered foreign lawyers.

We emailed information about the questionnaires to people who we knew fell into one of the categories above, directing them to the relevant questionnaire.

Responses

1. Barristers qualified in England and Wales who were in the process of, or who were considering, transferring to become solicitors

In total, 77 people completed this questionnaire.

- Location: 74 were living in the UK
- Employment:
 - 2 were practising as a barrister
 - 15 were employed barristers
 - 38 were paralegals

- 71 intended to practise as a solicitor once admitted, of whom 44 had a position arranged
- Gender: 31 were male and 44 female
- Age:
 - 41 were in the age range 22–29
 - 20 were in the age range 30–39
 - 9 were in the age range 40–49
 - 3 were aged over 50
- Ethnicity:
 - 46 were "White", "White Irish" or "White Other"
 - 11 were "Black", "Black British Caribbean ", "Black British African" or "another Black or Black British Background"
 - 10 were "Asian", "Asian British Indian or Pakistani" or "other Asian"
- Disability: 2 had a disability

The main reasons people were seeking to transfer were because of the lack of opportunities (pupillage and tenancies) at the Bar.

2. Barristers qualified in England and Wales who had transferred and been admitted as a solicitor

In total, 189 people completed this questionnaire.

- Location: 172 were living in the UK
- Employment:
 - 163 were working in legal practice in the UK
 - 157 had been working in a solicitor's practice at the time they applied to transfer.
- Gender: 96 were male and 93 were female
- Age:
 - 42 were in the age range 22 – 29
 - 88 were in the age range 30 – 39
 - 37 were in the age range 40 – 49
 - 15 were aged over 50
- Ethnicity:
 - 46 were "White British", "White Irish" or "White Other"
 - 3 were of "mixed ethnicity"
 - 9 were "Black or Black British Caribbean", "Black British African" or "other Black or Black British background"
 - 10 were "Asian or Asian British Indian", "Asian British Pakistani", "Other Asian" or "Asian British Background"
 - 1 was " Chinese or other ethnic group "
- Disability: 3 had a disability

Respondents were asked to summarise why they decided to transfer to become a solicitor.

The reasons most frequently given for their decision to transfer to become a solicitor were:

- difficulty in securing pupillage and/or a tenancy at the Bar,
- higher earnings and better security available as a solicitor, and
- improved career prospects, including opportunities to become a partner.

3. Other lawyers who are undertaking or considering starting the transfer process

In total, 616 people completed this questionnaire.

- Location: 316 were living in England and Wales of whom 232 were working in legal practice in England and Wales
- Employment:
 - 491 intended to practice as a solicitor in England and Wales once they had qualified (204 of these had positions already arranged)
 - 115 did not intend to practise in England and Wales
- Gender: 333 were male and 276 female
- Age:
 - 191 were in the age range 24–29
 - 293 were in the age range 30–39
 - 76 were in the age range 40–49
 - 22 were in the age range 50–59
 - 5 were in the age range 60–65
 - 2 were over 70
- Ethnicity:
 - 340 were "White British", "White Irish" or "White Other"
 - 13 were of "mixed ethnicity"
 - 59 were "Black or Black British Caribbean", "Black British African" or "other Black or Black British background"
 - 117 were "Asian or Asian British Indian", "Asian British Pakistani", "Other Asian" or "Asian British Background"
 - 25 were " Chinese or other ethnic group "
- Disability: 5 had a disability

Those who did not intend to practise as a solicitor in England and Wales were asked to indicate the most important reasons for wanting to be admitted as a solicitor. The most common answers were:

- "to open up other opportunities in the future",
- "to advise existing clients on matters of English law",
- "because you might want to work as a solicitor in England and Wales in the future",
- "to enhance your reputation in your home jurisdiction".

4. Other lawyers who had completed the transfer process and had been admitted as a solicitor

In total, 811 people completed this questionnaire. They were invited to answer questions about their country of residence and their experiences since

qualifying as a solicitor in England and Wales. The answers given are summarised below.

- Location: 339 were living in England and Wales, 459 were not
- Employment:
 - 610 qualified in order to practise as a solicitor in England and Wales (191 did not)
 - 462 had worked as a solicitor in England and Wales (148 had not)
 - 628 had taken out a practising certificate
- Gender: 421 were male and 388 were female
- Age:
 - 102 were in the age range 22–29
 - 408 were in the age range 30–39
 - 187 were in the age range 40–49
 - 75 were aged over 50
- Ethnicity :
 - 547 were White British, White Irish or White Other
 - 20 were of mixed ethnicity
 - 65 were "Black or Black British Caribbean", "Black British African" or "other Black or Black British background"
 - 74 were "Asian or Asian British Indian", "Asian British Pakistani", "Other Asian" or "Asian British Background"
 - 40 were " Chinese of other ethnic group "
- Disability – 8 had a disability

Those who did not qualify in order to practise as a solicitor in England and Wales were asked to give the most important reason why they qualified. The most common answers were:

- "to open up other opportunities in the future",
- "because you might want to work as a solicitor in England and Wales in the future"
- "to advise your existing clients on matters of English law"
- "to enhance your reputation in your home jurisdiction".

A large majority of people who responded clearly regarded the transfer experience as a positive one. Improved job opportunities, enhanced status, greater acceptance by clients and promotion were frequently associated with transfer.

Those whose comments on the experience were negative typically referred to the difficulties they had gaining employment in England and Wales. Many suggested that employers looked behind their qualification as a solicitor and either did not understand the transfer route to qualification, or they held it in low regard or were looking for experience of practice in England and Wales that transferees did not have. Others had been disappointed with the level of pay they had been able to secure and some referred to the high costs of living in London. A small number of those who responded felt that the QLTT did not

cover aspects of practice that were relevant to city practice. One commented that the QLTT is too easy and insulting ("*any fool can pass it*").

A few people commented that the QLTT had not ensured they had adequate knowledge of practice when they qualified.

5. Registered Foreign Lawyers

In total, 20 people responded to this survey.

- Location: 9 were currently living in England and Wales, 11 were not
- Gender: 3 were women, 17 were men
- Age:
 - 3 of the respondents were in their 30s
 - 7 in their 40s
 - 7 in their 50s
 - 2 were over 60
 - 17 were men and 6 women
- Ethnicity:
 - 16 were white
- Disability: no respondents were disabled

Eight respondents were US qualified and of those, six did not know whether they were eligible to apply under the provisions of the QLTR. The reason most respondents had become RFLs was to enable them to become partners in an English firm.

One of US lawyers who did know they were eligible to apply under the QLTR intended to apply to transfer in order to be able to practice without restrictions.

The others who responded were from a range of jurisdictions; some were eligible to apply under the QLTR, others were not. Some intended to transfer, others did not know and some did not.

The SRA has produced a full report of the motivation survey which further analyses the results. This will be published in due course.

Annex 2

Relevant results of benchmarking research

| Regulatory Body | Royal Institute of Chartered Surveyors (RICS) | General Dental Council (GDC) | Institute of Chartered Accounts in England and Wales (ICAEW) | Royal College of Veterinary Surgeons (RCVS) | General Medical Council (GMC) |
|------------------------------|---|--|--|--|--|
| English Language Proficiency | No specific English test | Non EEA candidates must achieve a minimum score of 7.0 on IELTS and no score less than 6.5 | No specific requirements specified but test conducted in English | IELTS score at least 7. First language English or if degree taught in English exempt | IELTS overall score 7: Minimum of 7 in speaking, and 6 in listening, academic reading and academic writing |

Annex 3

Equality and diversity action plan

| Action required | How? | Time scale |
|---|---|--|
| Assess the impact of the detailed arrangements made under the new scheme, in particular the assessments and English language requirement and in particular in relation to disability. | Through further EIA and monitoring English language requirement | 1 year after implementation [January 2012] |
| Further consider the position of Bar Professional Training Course graduates | By mapping the Bar Professional Training Course against the Legal Practice Course to identify areas for exemption | February-May 2010 |
| Address need for collecting improved data on admissions in future (e.g. jurisdiction from which they came and reason for not being admitted) | Through SRA's Enabling Programme and liaison with operational teams | Ongoing |
| Ensure that assessment providers collect and monitor equality data and provide this to the SRA | Through procurement process and quality assurance systems | |
| Ensure that we better understand the needs of those wishing to transfer and those who are or have already transferred | By regular engagement with representative groups, lawyers seeking to transfer and solicitors admitted through the transfer route and seeking feedback through questionnaires and or a surveys | Ongoing |
| Ensure that equality data is collected about applicants who fail the assessments as well as those who pass in the new scheme | Through data collected by assessment body | Part of tender/monitoring process – 2010 |
| Ensure that assessment organisations take into account time and cost considerations when developing assessments | Through validation process | Part of tender/monitoring process – 2010 |
| Ensure assessments are marked objectively, fairly and consistently | Through the procurement process and implementation of quality assurance process | Part of tender/monitoring process – 2010 |

| Action required | How? | Time scale |
|--|---|---------------------|
| Monitor the take up of the new arrangements | By monitoring the number of applicants, monitoring the number of Registered Foreign or European Lawyers, and analysing impact of Recognised Jurisdiction approach | From September 2010 |
| Ensure that the process adopted for English language testing is fair, objective and that coaching courses and testing centres are available in a large number of jurisdictions | By agreeing transparent criteria for approval of English language providers | March 2010 |