

Application made by the Solicitors Regulation Authority to the Legal Services Board under Part 3 of Schedule 4 to the Legal Services Act 2007 for the approval of the SRA Amendments to Regulatory Arrangements (QLTSR) Rules [2015]

A Summary

1. This application is made to the Legal Services Board (LSB) for the approval of changes to the SRA Handbook to effect the third phase of the SRA's Red Tape Initiative in relation to education and training regulations.. The specific changes are described in section C below and are intended to remove unnecessary regulatory processes and requirements and create a more consistent approach to admission for all individuals, irrespective of the qualification pathway that they have followed.
2. In outline, the changes:
 - put Welsh language skills on an equal footing with English language as a possible outcome of our educations and training regulations; and
 - remove requirements for lawyers who qualified overseas to have a certificate issued by us confirming their eligibility to sit the Qualified Lawyers Transfer Scheme Assessment ('QLTS'). This includes the removal of the requirement for non-EEA international applicants to undertake a separate English Language test and the restriction on the maximum number of assessment attempts permitted in a five year period.

B Details of the proposed alteration

3. The key changes relate to the SRA Qualified Lawyers Transfer Scheme Regulations 2011 ('QLTSR'), which appear in the Authorisation and Practising Requirements section of the SRA Handbook. These regulations govern the procedures for lawyers from other legal professions and jurisdictions which, when followed, enable them to be admitted to the roll of solicitors of England and Wales. There will also be consequential amendments to the SRA Admission Regulations 2011 and the Handbook's Glossary.
4. We also consider it proportionate to remove a layer of bureaucracy from the transfer system which is unnecessary to safeguard the public interest – namely the requirement to undergo a character and suitability and eligibility assessment before attempting the QLTS assessment. This also helps ensure consistency by aligning the transfer procedures with the 'standard' domestic route to qualification where suitability is assessed at the admission stage, unless someone asks for an early voluntary assessment.
5. The introduction of an express outcome relating to Welsh language in the training regulation is needed to comply with legislation created to ensure Welsh language speakers are treated no less favourably than English speakers. We consulted on the proposals from 22 September to 17 November 2014. We analysed the responses and drafted the amendment rule and put them before the SRA Board on 3 December 2014. Stakeholder feedback indicated broad approval so no significant changes to the proposals were made. On 3 December the Board approved the proposals and made the rule subject to LSB approval. We made one amendment to the consultation

analysis that went before the board to take into account the response from the Junior Lawyers Division (JLD) which came in late. The Board was aware of the late response from the JLD. We have included the JLD's response, however, it contained no substantive objection which would cause us to reconsider our proposals.

C Details of the SRA's regulatory arrangements relevant to this application

Nature and effect of the existing Regulatory Arrangement	Nature and effect of the proposed alteration	Why we want to make the alteration
<p>Welsh language Outcomes of the Training Regulations and QLTSR require individuals who qualify as solicitors to “have achieved an appropriate standard of written and spoken English”. This conflicts with the obligations imposed by the Welsh Language (Wales) Measure 2011, not to treat the Welsh language less favourably than the English language.</p>	<p>Adding “or Welsh” to the end of the outcome statement allows an academic provider to offer the Legal Practice Course or Qualifying Law Degree, for example, in Welsh if such a provider felt such a course could reflect the needs of the Welsh speaking community better.</p>	<p>This would place the Welsh language on an equal footing with the English language which is a legal obligation imposed by statute.</p> <p>The SRA Handbook’s rules are structured in a tiered fashion, with the most fundamental regulatory arrangements – the SRA Principles – at the ‘top’. Next there are the Outcomes, then rules/regulations, indicative behaviours and finally guidance. The final two types of arrangement do not have to be followed. New guidance or a new regulation would conflict with the current outcome, so amending the outcome itself is the minimum we need to do in order for Welsh to be used in the qualification system.</p> <p>The proposal and redrafted regulations have been subject to checks by SRA legal advisers to ensure no unintended consequential impacts or effects.</p>
<p>QLTS certificates of eligibility Regulation 2 of the QLTSR requires lawyers to prove they are eligible by being a qualified lawyer in a jurisdiction we recognise, have followed the full route to qualification and are entitled to practise, have satisfied English language requirements, and are of the right character and suitability to be a solicitor. All this must take place before a lawyer can sit the QLTS assessments.</p>	<p>The proposed alterations retain our eligibility, and suitability requirements but move when this happens to the pre-admission stage.</p> <p>The time limit for completing assessments (i.e. within the five-year validity period of the certificate) and the limit on the number of attempts is removed. English language standards have been retained in the assessments themselves but we have</p>	<p>A change to the regulations is essential as the requirement to apply for a certificate of eligibility is a regulatory requirement – it is not set out in guidance, so a change to guidance will not suffice. Deleting rules would remove the requirements to prove eligibility entirely – which is not our intention.</p> <p>The time limit and maximum number of attempts does not serve a regulatory purpose. In fact if a candidate were to fail an assessment three times at present within the first year of their certificate, they would be prevented from taking the assessment a fourth time until</p>

Nature and effect of the existing Regulatory Arrangement	Nature and effect of the proposed alteration	Why we want to make the alteration
<p>Regulations 2 and 3 of the Admission Regulations contain appeal provisions from decisions relating to certificates of eligibility.</p>	<p>removed the additional burden on non-EEA/EU candidates to also produce separate evidence of an English language standard.</p> <p>There is also a guidance note to explain what the changes will mean to holders of existing certificates.</p> <p>The appeal mechanisms in the Admission Regulations relevant to certificates of eligibility applications have been removed. Appeals to the High Court are now allowed by the Admission Regulations at the admission stage. This echoes the domestic route to qualification.</p> <p>We also propose removing the redundant definitions of 'certificates of eligibility'. Where they remain mentioned in the regulations (i.e. regulation 10 allows the old Qualified Lawyers Transfer Test certificates of eligibility to remain valid until their expiry) the normal meaning of the term can be relied upon.</p>	<p>the expiration of their certificate. There is no justification for such a prevention.</p> <p>The additional burden of providing separate evidence of English language skills on non EEA/EU candidates only is being removed because the QLTS assessments sufficiently and reliably assess written and spoken English abilities of all candidates</p> <p>The objective is to remove unnecessary steps for qualified lawyers and bring the regime into line with changes made last year to the domestic route. This cannot be done without reworking regulations 2, 6, and 7. Guidance would not be appropriate on its own as it would conflict with clear regulatory requirements. However, a new guidance note to regulation 11 explains the situation for existing QLTS certificate of eligibility holders.</p> <p>The proposal and redrafted regulations have been subject to checks by SRA legal advisers to ensure no unintended consequential impacts and effects.</p> <p>We will still permit QLTS candidates to seek an early check on character and suitability if they wish before attempting the assessment. We will also have a facility where QLTS candidates can register with us beforehand to ensure that they are qualified lawyers in a jurisdiction that we recognise.</p>

D How each alteration will help promote the Regulatory Objectives

6. The Red Tape Initiative is designed to achieve a regulatory framework consistent with the SRA's risk-based, outcomes-focused approach, allowing it to concentrate on the areas of greatest risk and the issues that really matter. The removal of the need for a certificate of eligibility reduces the cost of regulation to the individual: removes the cost of the certificate (£400 or £200 depending on whether the individual is within the EEA/EU), and the requirement on non-EEA/EU candidates to produce separate evidence of English language skills.
7. The SRA must, so far as is reasonably practicable, act in a way that is compatible with the regulatory objectives set out in the Legal Services Act 2007, and in a way that it considers to be most appropriate for the purpose of meeting those objectives. The SRA Board is satisfied that the amendments it has made are compatible with the regulatory objectives and represent an appropriate means of meeting them.

Protecting and promoting the public interest

8. Adding the opportunity for some aspect or aspects of the qualification framework to be offered in Welsh is neutral to this objective, as it could be seen to it is essentially a technical change to ensure our training framework does not conflict with legislation. The changes create a possibility for training providers to design and deliver courses in Welsh, or even for part or parts of a period of recognised training to be undertaken in the Welsh language.
9. The QLTS changes should also be neutral to this objective. The key checks we place on suitability remain at the pre-admission stage, so consumers of legal services have comfort that people have been properly assessed by us.

Supporting the constitutional principle of the rule of law

10. The amendments are considered to have a neutral effect on this regulatory objective.

Improving access to justice

11. The amendments are considered to have a neutral effect on this regulatory objective.

Protecting and promoting the interests of consumers

12. As in the case of the public interest objective, the interests of consumers are protected by the continuing obligation on overseas lawyers to satisfy the SRA of their suitability to be admitted. The Welsh language amendments are considered to have a neutral effect on this regulatory objective.

Promoting competition in the provision of services

13. The amendments are considered to have a neutral effect on this regulatory objective.

Encouraging an independent, strong, diverse and effective legal profession

14. The amendments should have a positive effect on this regulatory objective through the removal of burdensome and unnecessary regulatory provisions.

Increasing public understanding of the citizen's legal rights and duties

15. The amendments are considered to have a neutral effect on this regulatory objective.

Promoting and maintaining adherence to the professional principles

16. The amendments are considered to be proportionate and to have no foreseeable negative effects on this regulatory objective.

F Statement in respect of the Better Regulation Principles

17. We believe that the amendments fulfil our obligations under section 28 of the Legal Services Act 2007 to have regard to the Better Regulation Principles. The amendments are considered to be proportionate and targeted in a way that achieves the necessary level of protection for consumers and the public interest with an appropriate level of regulation as follows:

- proportionate: the removal of the blanket character and suitability check for all QLTS applicants, irrespective of whether they pass the QLTS assessment and requiring at admission is more proportionate and timely
- accountable: the changes remove the need for some regulatory decisions which cannot be justified on the basis of consumer interest in that not all those who complete the QLTS assessment eventually seek admission.
- consistent: the changes take account of changes made elsewhere in the training regulations and permit a more consistent approach to all applicants seeking admission who have met our education and training requirements.
- transparent: it removes artificial distinctions from EU/EEA applicants and international applicants in relation to English language requirements.
- targeted: the new regulations assess suitability at the point of admission and not as an eligibility requirement to complete an assessment..

18. We have consulted publicly on the proposed changes and taken full account of the views of stakeholders in developing the regulatory amendments. Following the approval of the LSB, we will ensure that the changes are published and implemented transparently, and that full and accessible guidance is made available to all actual and potential candidates. We will also write to all candidates who are part-way through the QLTS assessment to explain how the transitional arrangements will affect them.

G Statement in relation to desired outcomes

19. Our desired outcome is to have in place a consistent, proportionate and value for money regulatory framework which contains only those regulations and processes that benefit the public interest.
20. As there is no outcome relating to wider policy we do not intend to perform a discrete review of the success of these changes.

Effects on other Approved Regulators

21. We consider that there are no potential impacts on other approved regulators. Barristers who wish to transfer to the roll of solicitors are dealt with under the QLTS and will no longer have to obtain certificates of eligibility, so therefore the Bar Standards Board (BSB) will no longer have to process applications for certificates of good standing at that stage. There should be some small administrative savings for them as a result. However the proposals do not affect areas which the BSB regulate.

When the changes will be implemented

22. The changes relating to the Welsh language provision are to be implemented, subject to LSB approval, in April 2015 when the next version of the SRA Handbook is released. The QLTS changes are to be implemented in November 2015.

Stakeholder engagement

23. The SRA published a formal consultation on 22 September 2014 setting out the proposals for the third phase of the Red Tape Initiative. This was designed to give all those whom we regulate, users of SRA-regulated legal services and others with an interest in legal regulation the opportunity to comment.
24. The closing date for responses was 17 November 2014. 23 responses were received in total from a variety of stakeholders including higher education providers, individual solicitors and firms, local Law Societies, member groups, the Junior Lawyers Division and the Law Society. Responses were largely supportive of the proposals which were seen by the majority of respondents as an appropriate way to reduce the regulatory burden without prejudicing the public interest. The final version of the analysis of responses is at annex 3 of the LSB application for the approval of SRA amendments to regulatory arrangements (Continuing Professional Development and miscellaneous) Rules [2015].

How the changes meet the LSB's education and training guidance

25. The changes help us meet the LSB's statutory guidance on education and training issued in March 2014 in the following ways:
 - the Welsh language addition gives providers the flexibility to determine how to deliver training which meets the required outcomes
 - the removal of the QLTS certificates of eligibility help us focus on what the individual must know at the point of authorisation.They have a neutral effect on the other outcomes within the guidance.

H Further explanatory information

26. The change relating to Welsh language is covered by the Amendment Rule “Draft SRA Amendments to Regulatory Arrangements (CPD and miscellaneous) Rules [2015]” which is attached to a separate LSB application on CPD. This is due to the different ‘in force’ dates for each change.
27. The following documents are directly related to the QLTS changes and are annexed to this application:

Annex 1 - Draft SRA Amendments to Regulatory Arrangements (QLTSR) Rules [2015]

Annex 2 – SRA Board report on the results of the consultation on the third phase of the Red Tape Initiative (separate document)

Annex 3 – consultation on the third phase of the Red Tape Initiative (separate document)

SRA contact for matters relating to this application

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Annex 1

Draft SRA Amendments to Regulatory Arrangements (QLTSR) Rules [2015]

Rules dated [] made by the Solicitors Regulation Authority Board.

Made under Part I, Part II, sections 79 and 80 of the Solicitors Act 1974 and paragraphs 2 and 3 of Schedule 14 to the Courts and Legal Services Act 1990.

Subject to the approval of the Legal Services Board under paragraph 19 of Schedule 4 to the Legal Services Act 2007 and coming into force on [1 November 2015].

Rule 1

The SRA Qualified Lawyers Transfer Scheme Regulations 2011 shall be amended as follows:

- (a) insert “for admission” after “Eligibility” in the title of regulation 2;
- (b) delete regulation 2.1(d), replace “.” with “; and” at the end of regulation 2.1(e) and renumber 2.1(e) accordingly;
- (c) insert new regulation 2.1(e) as follows:
 - “(e) have passed all *QLTS assessments* subject to any exemptions *we* may agree.”
- (d) delete “and (d)” from regulation 2.2 and 2.4;
- (e) delete regulations 2.3, 2.5, 2.6, and 2.8, and renumber 2.7 and 2.9 accordingly;
- (f) replace regulation 6.1 as follows:
 - “6.1 Subject to regulation 4.2, if *you* seek to establish eligibility under regulations 2.1(d) or 5.1(b) to (d) and *we* refuse *your* application *you* may, within one month of receiving notification from *us* of any decision under those regulations, ask for the application to be reviewed.”
- (g) replace regulations 7.1 to 7.5 with:
 - “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 Regulation 6.1 of these regulations gives *you* the right to ask us to review a refusal under regulation 7.4. *You* also 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. ”
- (h) in guidance note (i) to regulation 7 replace “Suitability Test” with “SRA Suitability Test” and delete guidance note (ii) to regulation 7;
- (i) in regulation 11.3 after “if you have commenced”, insert “on a part-time basis” and delete “on a part time-basis” after “these regulations”;
- (j) insert new guidance note to regulation 11 as follows:
- “Guidance note
- On 1 November 2015 these regulations were amended to remove the need to hold a certificate of eligibility in order to undertake the *QLTS* assessments. If *you* held a valid certificate on 1 November 2015, the provisions of those certificates ceased to have effect and *you* are now eligible to undertake the assessments and, if successful, apply for admission in accordance with regulation 2.”

Rule 2

The SRA Admission Regulations 2011 shall be amended as follows:

- (a) in the title of regulation 2, delete “and certificates of eligibility for overseas lawyers”;
- (b) delete regulation 2.2 and renumber 2.3 to 2.5 accordingly;
- (c) in regulation 2.3, delete “16(3) and (4) of the *QLTR* or, where appropriate,”;
- (d) delete “or 2.2” from regulations 2.4 and 2.5;
- (e) in regulation 2.5, delete “or to issue a *certificate of eligibility*,”
- (f) replace regulation 3.1(b) with “to refuse to admit *you* on the ground of suitability under regulation 7.5 of the *QLTSR*.”
- (g) delete regulation 3.1(c);
- (h) delete regulation 3.2 and renumber regulations 3.3 and 3.4 accordingly;

- (i) replace regulation 3.3 with “An appeal under regulation 3.1 a) or (b) above must be brought within three months of *you* receiving notification of *our* decision”;
- (j) in regulation 3.4(a), replace “issue a *certificate of eligibility*” with “admit *you* as a *solicitor*”.

Rule 3

Rule 2 of the SRA Handbook Glossary Rules shall be amended as follows:

- (a) delete the definition of “**certificates of eligibility**”;
- (b) delete the definition of “**QLTR certificate of eligibility**”;
- (c) delete the definition of “**QLTS certificate of eligibility**”.

Rule 4

These amendment rules come into force on 1 November 2015 or the date of approval of the Legal Services Board, whichever is the later.