

**Application 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 SQE Assessment Regulations
- minor amendments to paragraphs 1, 6, 7, 8 and 9 and the addition of new paragraph 11 in the Solicitors Qualifying Examination (SQE): approach to qualified lawyers seeking admission as a solicitor of England and Wales – the principles (referred to throughout this application as ‘the Principles for Qualified Lawyers’).

31 July 2020

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## Section A – Introduction

1. High standards in the solicitors' profession and a strong set of shared ethical and professional values are essential for consumer protection and confidence. Our role is to make sure that both the public and employers can trust that anyone entering the solicitor profession is competent and fit to practise.
2. The current system of qualification, with multiple courses and examinations, means it is difficult to have full confidence that qualifying solicitors are all meeting the same standard. Almost four out of five members of the public said they would have more confidence in solicitors if they passed the same final examination.
3. In 2017, our Board agreed to change the way solicitors qualify by introducing a new, single rigorous assessment - the Solicitors Qualifying Examination (SQE). In 2018, you approved the framework for the SQE.
4. Following a two-year period of piloting, engagement and development, our Board has approved the final design of the SQE. It has also decided that the SQE will be implemented from 1 September 2021.
5. The two objectives we set out for the SQE are:
  - greater assurance of consistent, high standards at the point of admission
  - the development of new and diverse pathways to qualification, which are responsive to the changing legal services market and promote a diverse profession by removing artificial and unjustifiable barriers.
6. We began the process of looking at how solicitors train nine years ago. Between 2018 and 2020, we have been developing the detail of the SQE, testing, piloting and engaging to refine the assessment. This has involved extensive engagement with stakeholders, involving more than 26,000 interactions with interested parties, more than 200 meetings, events and webinars, more than 1,200 responses to 14 surveys, and meetings and engagement with our SQE Reference Group<sup>1</sup> and representatives from

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<sup>1</sup> The Reference Group has representatives from the following groups: Access to justice foundation, AGCAS, Association of Law Teachers, Apprenticeship employer group, Bar Standards Board, Black Solicitors Network, Committee of Heads of UK Law Schools, City of London Law Society, Cam Exam, GMC, Government Legal Service, Institute for Apprenticeships, Junior Lawyers Division, Lawyers with Disabilities, Legal education and training group, Lexis Nexus, Society of Legal Scholars, Socio Legal Studies Association, Society of Asian Lawyers, Sutton Trust, The Law Society and the Young Legal Aid Lawyers Group.

There is also membership representation from the following Universities and training providers: BARBRI, Cardiff University, University of Manchester, University of Buckingham and University College London.

black, Asian and ethnic minority (BAME) groups and stakeholders representing disabled solicitors.

7. At a high level, our design for the SQE assessments has remained largely unchanged. But the evidence we have gathered through piloting, engagement and expert input has resulted in improvements to our original proposals. We have moved to a uniform assessment for SQE2 to make sure that it provides proper consumer protection, recognising that solicitors need to be competent to practise in all the areas where they acquire practice rights on admission, and to make sure the assessment is as fair and consistent as possible. We have had advice and published a report from the Bridge Group (see annex 9), specialists in research on social equality, and we have updated and published our EDI Risk Assessment.
8. We have also made improvements to the design of SQE1:
  - We have removed the requirement for a skills assessment in SQE1. We will test the full range of skills in SQE2.
  - We will require two 180-question Functioning Legal Knowledge assessments (FLK), rather than three 120-question assessments.
9. We are also making provision for candidates to take the SQE in the Welsh language.
10. The SRA Board has decided that it will proceed to implement the SQE, on the basis of a final design, which is valid, reliable, manageable and cost effective.
11. This application asks the LSB to approve the SQE Assessment Regulations which set out conditions that candidates must meet when taking the SQE assessment. This application also includes, for context, a summary of the key drivers for change which we set out in our first application, and information on the issues highlighted in your decision notice following the first application, and subsequent correspondence.
12. We are also seeking approval of minor changes to the Principles for Qualified Lawyers.

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Representatives from the following firms are also attendees: Blake Morgan, Lawnet and Riverview

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## Section B – What are we proposing?

### What is this application for?

13. This application asks the Legal Services Board (LSB) to approve:
- the SQE Assessment Regulations (see annex 1) which set out the conditions that candidates must meet when taking the SQE
  - minor amendments to paragraphs 1, 6, 7, 8 and 9 and the addition of new paragraph 11 in the Solicitors Qualifying Examination (SQE): approach to qualified lawyers seeking admission as a solicitor of England and Wales – the principles (referred to throughout this application as ‘the Principles for Qualified Lawyers’). (See annex 2.)

### What is included in the scope of this application?

14. In March 2018, [you approved](#):
- regulations 1.1 – 4.1 of the SRA Authorisation of Individual Regulations (the SQE Provisions)
  - the SRA Handbook Glossary 2012 (Amendment) Rules
  - the Solicitors Qualifying Examination (SQE): approach to qualified lawyers seeking admission as a solicitor of England and Wales – the principles (see annex 6).
15. We explained in that application (paragraph 22) that the SQE Provisions set out the requirements for anyone wishing to qualify as a solicitor of England and Wales. These are:
- A degree or equivalent qualification or experience.
  - Passing the SQE. This will enable candidates to demonstrate:
    - the competences set out in the Statement of Solicitor Competence and
    - the knowledge set out in the Statement of Legal Knowledgeboth to the standard prescribed in the Threshold Standard.
  - Completing qualifying work experience (QWE). This must be:
    - at least two years duration (or part time equivalent)

- certified by either a solicitor or a compliance officer for legal practice (COLP).
  - Satisfactory character and suitability assessed at the point of admission.
16. The SQE Provisions also set out the requirements for the period of QWE, and admission requirements for qualified and part-qualified lawyers.
17. Whilst the SQE Provisions introduced the revised criteria for admission as a solicitor, we explained in our first application that we would move to appoint an assessment provider and, together with them, develop and test the detailed design of the centralised assessment. We would then submit a second application for approval of additional regulatory arrangements that were required in order to give effect to the requirement to sit a centralised assessment in regulation 1.1(a) of the SQE Provisions. These additional regulatory arrangements would include mandatory assessment requirements for candidates sitting the SQE assessments relating to, for example, the number of retakes, the total time a candidate can take to pass the SQE assessments and appeals. This application is the request for approval of those additional regulatory requirements as set out in the SQE Assessment Regulations.
18. In the March 2018 decision notice, you set out a range of issues which had been raised by stakeholders during the development of the proposals and during the first application process. We provided information in response to these issues during the first application and you confirmed you were content to approve that application on the basis of the information received.
19. You suggested we provide further information on the following areas, once the detailed work had been carried out to develop and test the assessment, as falling to be considered in light of the application to give effect to regulation 1.1(a):
- the cost of the assessment
  - an updated EDI Risk Assessment
  - the quality of the assessment
  - whether the assessment would be offered in Welsh.
20. We have provided further information about these points in this application. We attach an updated EDI Risk Assessment (annex 4). We also attach the updated assessment specifications for SQE1 and SQE2, which we have developed together with Kaplan, the assessment provider. We believe this information provides the additional detail that was inevitably missing from the initial application on how the SQE would operate and addresses the areas of professionalism and ethics which you raised in your letter of November 2019.

## Qualified Lawyers

21. This application also requests some minor changes to the Principles for Qualified Lawyers. These changes are to make sure that the Principles correctly apply the policy intention in the rules.

### Why did we apply for approval of these regulatory arrangements in two stages?

22. We explained in our first application that there were a number of reasons why it was necessary to apply for approval of the new admission requirements before we had appointed an assessment provider and finalised the assessment design and detailed assessment regulations.
23. We would refer you to the paragraphs 1-13 of our January 2018 application. In summary, we explained that the SQE provisions provided a clear and certain framework against which the detailed structure and content of the assessment would be developed. We needed this certainty in order to be able to appoint an assessment provider to invest in the SQE development work. Further, we needed approval of the new admission criteria so that the student market, law firms and training providers had sufficient certainty to prepare and respond to the introduction of the SQE. As you recognised in the decision notice of March 2018: “the SRA has applied at this stage for approval of the framework that will allow for further development and potentially implementation of the SQE in order to provide greater certainty and to reduce the financial risk to the assessment organisation that it intends to appoint in May 2018. The SRA’s justification is that the assessment organisation will be expected to invest significant funds in the development of the SQE over the coming months.”
24. This strategy has proved effective. We appointed Kaplan as the assessment provider in 2018 and section C sets out the work they have done to develop and pilot the assessment design that is annexed to this application. In particular, they have reviewed the design of the SQE assessments including running two pilots, made recommendations as to the final design, drafted the assessment specifications as well as making significant progress in putting in place the people, systems and processes needed to implement the SQE, including investment in the IT system and website which will be needed for the SQE.
25. There has been significant investment in the training market on the basis of the approval of the SQE Provisions following the first application (see annex 8). We, and others, have also been able to provide information for potential candidates, for example through working with aspiring solicitors to develop our [Career In Law Facebook page](#).

## Why are we applying now?

26. We have tested and piloted the SQE assessments and we are on track to introduce the SQE in autumn 2021 as planned. On 2 June 2020, our Board took the decision to introduce the SQE Provisions on 1 September 2021. The first assessments will run in November 2021 (SQE1) and April 2022 (SQE2).
27. In making the final decision to introduce the SQE in June 2020, our Board considered whether we should delay this application and the introduction of the SQE in light of the recent Covid-19 pandemic. We do not see any need to delay because of Covid-19. We and Kaplan have both been able to continue SQE development and stakeholder engagement working remotely. We have identified the tasks on our critical path and they can be delivered. Key personnel, and substitutes, have been identified. Work is already underway to consider options for dealing with future, similar crises (see paragraphs 200-201).
28. We see a mixed picture from both firms and training providers in relation to Covid-19. Some organisations say financial pressures and additional Covid-19 workload is constraining SQE development time and resource. Others do not see any disruption due to Covid-19, already have courses and other resources under development, and do not wish to delay because this could have a financial impact for them.
29. Some stakeholders have suggested that there may be challenges associated with candidates securing QWE in the context of the effects of Covid-19. The Bridge Group commented on this suggestion in their 2020 report. They said that: “overall we do not anticipate these impacts warrant rethinking the proposed arrangements – nor should they delay the current implementation plan. We anticipate that the increased breadth of QWE opportunities that will be available as a result of introducing the SQE will mitigate some of the effects of the pandemic”. And they concluded that: “therefore, the introduction of the SQE offers an opportunity to address some of the anticipated negative effects of the pandemic on recruitment to the legal sector, and on diversity and inclusion”. In turn, this would support the regulatory objective of encouraging an independent, strong, diverse and effective legal profession.
30. Our transition arrangements are designed to facilitate a gradual approach to implementation. The last qualifying law degree (QLD) or Common Professional Examination / Graduate Diploma in Law (CPE/GDL) will start on or before 31 December 2021 (subject to arrangements for deferring students and those who have accepted the offer of a training contract – see paragraph 32 below). As stated, some providers have SQE preparatory courses well under development in line with this timetable and it would be unfair to those providers, and to candidates who are waiting for the introduction of the SQE, to delay implementation. We have kept our transition arrangements under review and made a number of changes to allow providers to take a flexible approach to transition. A small number of universities – four at time of writing – have raised concerns about being unable to start a validated QLD or CPE in academic year 2021-22.

31. We have decided, therefore, to extend validations of QLD and CPE courses to academic year 2021/22 for students who accept offers before 31 August 2021 and where the course starts by 31 December 2021. This provides a longer overlap between the old and new admission arrangements, and therefore provides greater flexibility. It addresses the impact of the delays caused by Covid-19. It maintains standards – allowing us to introduce the SQE as planned - while addressing stakeholder concerns in line with the flexibility we have shown in relation to the pandemic and current education and training arrangements. It also gives students more choice.
32. We have also extended our validation of QLDs and the CPE to 31 August 2022 for two specific groups:
  - students who have an accepted offer of a place on QLDs or CPE courses that were due to start in academic year 2020/21 but who have deferred their place to 2021/22
  - non-law graduates who, before 1 September 2021, have received the offer of a period of recognised training and are due to start the CPE
33. We also considered whether we should extend the transitional arrangements for candidates qualifying via the Qualified Lawyers Transfer Scheme (QLTS). To allow those who had started on the QLTS pathway to qualification a reasonable length of time to finish qualifying and apply for admission, the transitional arrangements allow those who have passed the first part of the QLTS - the multiple-choice test (MCT) - before 1 September 2021 up to (and including) 31 August 2022 to complete the second part of the QLTS qualification (known as the OSCE) and apply for admission.
34. Kaplan will be running the OSCE assessments in November and plans three sittings next year (two of which are planned to take place before SQE is introduced). If someone has already passed the MCT (and they are already qualified) they have ample time to finish the QLTS qualification by September 2022.
35. We are aware that there are some candidates who have been granted an exemption from the MCT in line with our current regulations (because they have the LPC) and had planned to qualify at the New York Bar in 2020/21 and then take OSCE to be admitted as a solicitor using the QLTS route. The transitional arrangements for the QLTS do not apply to individuals who have been granted an exemption from the MCT. They only applies to those who have passed the MCT. Individuals who have an MCT exemption will have to complete the OSCE and apply for admission via that route by 1 September 2021. Individuals do not have to be qualified in another jurisdiction at the point they take the QLTS assessments, only at the point they apply to us for admission.
36. Delays to the New York Bar exam and admissions (due to Covid-19), plus our requirement to complete the OSCE by 1 September 2021 to be admitted

under the QLTS scheme as they are not covered by QLTS transitional arrangements, mean that there may be some individuals who may not be able to qualify in the way that they intended by passing the New York Bar and then taking the QLTS.

37. The specific issue arises because they wish to take a route to admission intended for qualified lawyers, in parallel with becoming qualified lawyers in another jurisdiction. It is the delays in becoming qualified in the other jurisdiction that potentially prevent them from being admitted by 1 September 2021. If someone were already qualified and had been granted the MCT exemption, they would have time to finish the QLTS qualification and apply by 1 September 2021.
38. Where we have granted an exemption from the MCT due to the individual having taken and passed the Legal Practice Course (LPC), these individuals would be covered by our general transitional arrangements because they have the LPC. This means that if they are unable to complete the OSCE before 1 September 2021, they have until 31 December 2032 to qualify under the 'traditional' route to qualification. They also have a number of options to qualify under the SQE, including having prior work experience recognised and taking SQE2. Our Principles for Qualified Lawyers also set out our approach to qualified lawyers seeking admission as a solicitor.
39. While we are aware that this is a route to admission that some non-qualified lawyers choose to take, it is clear that admission via QLTS is intended to be for qualified lawyers. We do not intend to amend our transitional arrangements for QLTS, therefore, for the reasons stated above:
  - qualified lawyers who fall within the transitional arrangements by virtue of having passed the QLTS MCT have sufficient time to complete the QLTS and apply for admission before the end of the transitional arrangements
  - qualified lawyers with an exemption from the MCT on the basis of their LPC who do not complete the QLTS before the introduction of the SQE have a number of options to qualify under the SQE
  - candidates who have not yet qualified as a lawyer in another jurisdiction will have the option to take the full SQE. Those who qualify as a lawyer in another jurisdiction (eg New York), and then in England and Wales via the SQE, will have the right to seek exemptions for prior learning or experience which is equivalent to the SQE assessments. Or if they have passed the LPC, they have until 31 December 2032 to qualify under the general transitional arrangements.
40. We have been developing our plans for a single, rigorous assessment for almost ten years. We have already delayed implementation twice. Providers can introduce new SQE training courses and firms can adjust their recruitment practices when they are ready. We expect that, as with the

QLTS, training provision will grow in the first years of the SQE as demand for the SQE increases during the transition period. But we do not think that the fact that some providers may not be ready is a reason to further delay implementation.

41. We think it is now important that the market has certainty that the SQE has been approved and will be introduced in 2021. This certainty will stimulate the market and encourage more providers to move forward with their plans for the SQE and may support the regulatory objective of encouraging an independent, strong, diverse and effective legal profession. This certainty may also help with wider issues. For example, we are talking to government about additional funding for SQE candidates and they have said that consideration of this issue would be assisted by having final approval.

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## Section C – How did we get to this point?

42. In this section, we explain:
- why we are changing the way that solicitors qualify
  - what we have done since the last application
  - the final SQE design and how we got there, including details of the piloting and testing
  - our approach to data monitoring, analysis and publication
  - how we will quality assure the SQE
  - our risk management and business continuity arrangements.

### Why are we changing the way that solicitors qualify?

43. Detailed information about the key drivers for change were set out in paragraphs 24-28 of our first application, and your decision notice confirmed that, notwithstanding concerns raised by stakeholders that the case for change had not been made out, sufficient evidence had been provided. In the interests of clarity, and to provide context for this application, we set out below how we got to this point.
44. The primary purpose of the SQE is protection of consumers of legal services by ensuring a consistent and appropriate standard at admission as a solicitor of England and Wales. This is in line with the better regulation principles and the regulatory objectives to protect and promote the public interest and the interests of consumers and to encourage an independent, strong, diverse and effective legal profession. Therefore, as stated above, there are two objectives for the SQE:
- greater assurance of consistent, high standards at the point of admission
  - the development of new and diverse pathways to qualification, which are responsive to the changing legal services market and promote a diverse profession by removing artificial and unjustifiable barriers.
45. Our regulatory role is to make arrangements for admitting individuals to the roll and authorising them to practise as a solicitor. The new approach to qualification recognises the crucial importance of our role in safeguarding standards in the legal profession, and ensuring that consumers can trust that those entering the profession have the necessary skills, knowledge, ethical approach and professionalism to provide good quality legal services.
46. The current system is inconsistent:

- there are different routes to admission as a solicitor, which are assessed in different ways
- more than 110 providers offer the professional legal assessments we specify. They each set and mark their own assessments. We know that there is significant, unexplained grade inflation in higher education<sup>2</sup>. We also know that pass rates on the GDL and LPC vary from under 40% to 100%, but we don't know the reasons why.
- at the end of the period of recognised training (PRT) (also known as a training contract), the final decision to sign off a trainee as having the skills for practise as a day one solicitors, is made by the employer (subject to meeting our character and suitability requirements). There is no benchmarking or standardisation to make sure that decisions to sign off trainees are taken against a consistent standard. In practice, few trainees do not get signed off.

47. The current system is also expensive and inflexible. Aspiring solicitors can get stuck along the path to admission, for reasons other than their aptitude to practise, such as the cost of funding training (the LPC can cost up to £16,750 with the Professional Skills Course (PSC) costing about £1,500 on top<sup>3</sup>) and access to training contracts, with more students completing the LPC than there are contracts available.

48. The table below shows average progression figures through the current system, between 2011 and 2019.

Qualifying law degree	Start CPE <sup>4</sup>	Start LPC	Start period of recognised training	Admitted as a solicitor by these pathways
23,413	4,499	9,978	5,757	5,407

49. The introduction of the SQE will mean we can assure users of legal services, the profession and employers that all qualifying solicitors, regardless of pathway or background, have met consistent standards. This is in line with the regulatory objectives of protect and promote the public interest and the interests of consumers and encouraging an independent, strong, diverse and effective legal profession. It may also promote competition in the provision of legal services, by providing a level playing field for individuals entering the market as solicitors.

<sup>2</sup> [Office for Students analysis of degree classifications over time, December 2018](#)

<sup>3</sup> For example, enrolments as a percentage of applications for the full time LPC and CPE in 2018, were 85.6% (CPE) and 94.9% (LPC) for those funded by their training provider/employer; and 58.7% (CPE) and 72.3% (LPC) for those self-funded, or funded by a parent/guardian: Central Applications Board Ltd Annual Report 2018

<sup>4</sup> Common Professional Examination – course covering the foundations of legal knowledge for non-law graduates

50. It could also create new opportunities. We welcome different routes to qualification, such as apprenticeships, because they help attract the best candidates from a wider range of backgrounds. An independent assessment will enhance confidence in the various routes into the profession. This is in line with the regulatory objective to promote an independent, strong, diverse and effective legal profession and to protect and promote the public interest.

51. In summary, the SQE will benefit:

- the public – who can trust that solicitors, no matter how they trained, are meeting the same high standards. In a survey we conducted, 79% members of the public said that everyone should pass the same final exam to become a solicitor, and 76% said that they would have more confidence in solicitors if they all passed the same final exam<sup>5</sup>
- law firms and employers of all sizes – who will have a better guarantee that all the solicitors they employ have met the same high standards and could benefit from a potential widening of the talent pool. They will also have more flexibility to tailor their training in a way in which best works for their trainees and meets their business needs. Smaller firms will have access to standardised information for recruitment purposes. They will also have access to a wider recruitment pool. And funding will be available for firms who want to employ solicitor apprentices.
- education providers – who can use their own expertise to train SQE candidates effectively. Under the current system, we prescribe the content of the courses, but in the future course providers can respond nimbly to developments in legal services, such as legal tech.
- would-be solicitors – who can make choices, based on clear evidence, about how to train and which providers to choose. It will give the best candidates, from all backgrounds, a fair opportunity to qualify as a solicitor. Importantly, the SQE will not only validate different routes into the profession, it will also remove the training contract bottleneck (where the number of students completing the LPC is greater than the number of training contracts available).

52. We set out our intention to consult on changes to the way we regulate education and training in our 2013 [Training for Tomorrow Policy Statement](#). That statement outlined our desire to move from:

“...a system where we prescribe the pathways to qualification... to one in which we set out the day-one skills, knowledge and attributes that a

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<sup>5</sup> [ComRes survey of 1866 adults in England and Wales in August 2016](#)

new solicitor must possess and permit much greater flexibility as to how those competences are acquired.”

53. In 2014, the LSB published [Statutory Guidance](#). Its recommendations included:
- education and training requirements focusing on what an individual must know, understand and be able to do at the point of authorisation
  - providers of education and training having the flexibility to determine how to deliver training, education and experience that meets the outcomes required
  - regulators placing no inappropriate direct or indirect restrictions on the numbers entering the profession.
54. We published a new [Statement of Solicitor Competence](#) in April 2015. This was accompanied by:
- [Statement of Legal Knowledge](#): the legal knowledge that solicitors are required to demonstrate by point of admission
  - [Threshold Standard](#): the minimum standard the competences in the Competence Statement must be demonstrated to.
55. These three documents define the standards for practice as a solicitor and the competences that aspiring solicitors need to demonstrate in order to qualify. They were developed through extensive engagement with focus groups, a Delphi group of experts, large scale public research and a formal consultation. In all, we engaged with around 2,000 consumers (both business and individual), solicitors and other stakeholders when developing the Competence Statement. There was a high level of agreement amongst stakeholders that the Competence Statement accurately reflected the competences that would be expected of a qualified solicitor<sup>6</sup>.
56. We consulted three times on our proposals to introduce the SQE in addition to our consultation on the Statement of Solicitor Competence. In the two years leading up to our first application, we spoke to more than 10,000 people, and received more than 540 responses to our three consultations. In our [first SQE consultation](#), published in December 2015, we explained the two core objectives of our reform programme as:
- greater assurance of consistent, high standards at the point of admission
  - the development of new and diverse pathways to qualification, which are responsive to the changing legal services market

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<sup>6</sup> The public research found that 87% of practitioners and individual consumers and 90% of business consumers gave ratings of between 7 and 10 on a 10-point scale in relation to the Competence Statement (where 1 is low and 10 is high).

and promote a diverse profession by removing artificial and unjustifiable barriers.

57. We proposed that the best way to meet both objectives was through the introduction of a single, rigorous assessment for all aspiring solicitors. This would replace the current requirement to QLD or CPE, LPC, PSC and complete a PRT. Through the development of the Statement of Solicitor Competence and its associated documents, we could confidently determine the subjects and scope of what would be assessed in the SQE.
58. In our [second SQE consultation](#) we proposed that to qualify as a solicitor candidates would have to pass a new, single rigorous examination: the SQE. Candidates would also need to hold a degree, apprenticeship or equivalent, have undertaken a substantial period of workplace training and meet our character and suitability requirements. We said that we would procure an independent assessment provider to run and deliver the assessment and we would not specify how candidates prepared for the SQE. Instead, we would support students in making informed choices through publishing data about SQE pass rates of education and training providers.
59. Our Board decided to go ahead with the SQE in April 2017. We published our [third SQE consultation](#) in May 2017. This consultation sought views on the regulations that would implement the SQE. It also sought views on our proposals for recognising the previous qualifications and experience of qualified lawyers and the principles for qualified lawyers.
60. We applied to you for approval of the new admission requirements in January 2018. That application was approved in March 2018.
61. In August 2018, we applied to you for approval of our new Standards and Regulations. This included approval of the transitional arrangements for the SQE. That application was approved in November 2018.
62. On 2 June 2020, following a period of development and testing and extensive engagement with stakeholders, our Board agreed the final design of the SQE. They agreed that the SQE Provisions, the SQE Assessment Regulations and the SQE transitional arrangements should take effect from 1 September 2021.

### What have we done since the first application?

63. We explained in our first application (paragraph 159) that, in the two years leading up to the application, we had spoken to more than 10,000 people, and received more than 540 responses to our three consultations. For example, highlights in consultation two included:
  - a 14 week-campaign where we engaged with more than 6,800 people through 45 events, meetings and digital activities.
  - almost 4,650 visits to related website pages and more than 237,000 impressions on social media

- an extensive media campaign which helped secure almost 40 articles, with 68 percent on average being positive
  - seven Twitter polls, which received 856 votes in total. One question was viewed by close to 3,000 people and had more than 500 engagements
  - we had direct conversations with about 80 universities - two thirds of all law course providers.
64. Since you approved our first application, we have continued to engage with stakeholders through our SQE Reference Group, LinkedIn group and meetings with training providers, solicitors and other stakeholders. We have also sought stakeholder views on a range of SQE design issues through a series of online surveys, webinars and focus groups. Full details of our engagement activity since the last application are set out in section H, paragraphs 295-463.
65. We appointed Kaplan as the SQE assessment provider following an open and competitive procurement exercise. We have worked closely with Kaplan to design and test the SQE assessments. We have run two successful pilots with 316 candidates completing the SQE1 pilot in 42 test centres spread across England and Wales and internationally and 167 candidates completing the SQE2 pilot in two locations (oral skills) and 29 locations (written skills) in England and Wales.
66. We have published the final version of the SQE1 Assessment Specification (annex 5) and the SQE2 Assessment Specification (annex 7). We have published sample questions for SQE1, the timetable for the live SQE assessments and the final cost of the SQE. Sample questions for SQE2 will be published in autumn. We have also published our final EDI Risk Assessment (annex 4) and an updated report from the Bridge Group (annex 9) which examines the EDI risks and benefits of the SQE.
67. As stated, the SRA Board has now decided that it will proceed to implement the SQE on 1 September 2021. It took this decision on the basis that the final design is valid, reliable, manageable and cost effective.

## The final SQE design

68. Details of the SQE assessments are set out in the SQE1 and SQE2 Assessment Specifications (annexes 5 and 7). We set out these details below as context for this application.

### SQE1

69. Candidates must take two 180 question assessments of their application of Functioning Legal Knowledge (FLK).
70. The two FLK assessments comprise the following subject areas:

- Business Law and Practice; Dispute Resolution; Contract; Tort; Legal System of England and Wales; Constitutional and Administrative Law and EU Law and Legal Services.
  - Property Practice; Wills and the Administration of Estates; Solicitors Accounts; Land Law; Trusts; Criminal Law and Practice.
71. Ethics and professional conduct will be examined pervasively across the two assessments above. See paragraph 172 below.
72. The SQE1 Assessment Specification includes assessment objectives followed by the knowledge of law and practice which candidates are expected to apply in order to answer the questions.
73. Candidates are required to demonstrate a functioning knowledge of English and Welsh law and ethics and professional conduct. This means that candidates must show they can apply their knowledge of the law to practical contexts. They must demonstrate the competences set out in the Statement of Solicitor Competence to the level of a newly qualified solicitor of England and Wales. This will be tested at level 3 of the [Threshold Standard](#), the standard for a newly qualified solicitor. Details of the relationship between the [Statement of Solicitor Competence](#) and the FLK assessments is set out in the SQE1 Assessment Specification (annex 5). Details of the statistical and psychometric methods we will use to set the pass mark for the SQE assessment are set out in annex 6.
74. Candidates should be able to apply fundamental legal and ethical principles and rules appropriately and effectively at the level of a competent newly qualified solicitor in practice, to realistic client-based problems and situations. The FLK assessments use single best answer multiple choice questions. Each single best answer question is followed by five possible answers. We set out in paragraphs 107-117 the rationale and evidence for using single best answer multiple choice questions.
75. The SQE1 FLK assessments are closed book. The questions in the assessments are designed to test the application of fundamental legal principles which can be expected of a newly qualified solicitor of England and Wales without reference to books and notes. They are not designed to test matters of detail which a newly qualified solicitor would be expected to look up.
76. In line with the phased approach set out in paragraphs 318-328, the FLK questions will be available in Welsh from 2024/25.

## SQE2

77. SQE2 assesses candidates' ability to demonstrate skills in a legal context through a mixture of written and oral assessments. The legal skills to be assessed are:
- client interviewing and attendance note/legal analysis
  - advocacy

- case and matter analysis
- legal research
- legal writing
- legal drafting<sup>7</sup>

These skills will be assessed across five legal contexts, covering the reserved activities, but with the addition of Business Law and Practice because it is such a large area of practice.<sup>8</sup>

78. In total, candidates will take 16 assessments. The proposed final design for SQE2 is set out in the Assessment Specification at annex 7.
79. As with SQE1, questions on ethics will be pervasive through SQE2.
80. SQE2 will be available in Welsh on a phased basis, developed in discussion with key stakeholders in Wales. From autumn 2021 when the SQE is introduced, candidates will be able to provide responses to SQE2 written assessments in Welsh. In the second year of SQE, candidates will be able to provide their responses to SQE2 oral and written assessments in Welsh. This means that Welsh provision will be extended to all SQE2 assessments.
81. In the third year of SQE, questions for oral and written skills assessments will be translated into Welsh, ensuring that Welsh language candidates can take all parts of SQE2 through the medium of Welsh.
82. The SQE will introduce modern psychometric processes making sure the exam is of the quality appropriate for a professional licensing examination. Those who pass a professional licensing exam such as the SQE are granted reserved practice rights and need to be able to exercise them competently in order to protect the public and the public interest. These processes make sure the assessment is valid, reliable and accurate<sup>9</sup>. They ensure that the pass mark is directly related to the difficulty of the assessment and the standard of competency (the Threshold Standard). They keep standards stable over time and ensure that the candidates who pass deserve to pass. They are comparable to methods used by other regulators such as the New York Bar, and for UK doctors, the General Medical Council. The appointment of a specialist assessment provider means it can attract the best examination expertise, keep abreast of assessment methodologies and best practice, exploit IT solutions and take advantage of economies of scale. See annex 6 for an outline of the psychometric methods that will be used in the SQE. See paragraphs 176 (and following) for a discussion of how professionalism and ethics are assessed through the SQE.

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<sup>7</sup> Although there is no separate assessment called negotiation, all sittings of SQE2 will also contain at least one assessment involving negotiation.

<sup>8</sup> The contexts are: criminal litigation; dispute resolution; property practice; wills and intestacy, probate administration and practice; business organisations rules and procedures.

<sup>9</sup> Reliability is the consistency with which an assessment can reproduce the same outcomes. Validity is the extent to which an assessment assesses what it is intends to assess.

## How did we get to the final design?

83. The introduction of the SQE will represent a significant enhancement in assessment quality. The work we have done to align the assessment with the competences set out in the Statement of Solicitor Competence protects consumers, and removes unjustifiable barriers, by ensuring that entry to the profession is based on candidates' ability to demonstrate the competences captured in the Competence Statement.
84. The Statement of Solicitor Competence (and associated Statement of Legal Knowledge and Threshold Standard) were developed through input from around 2,000 stakeholders (solicitors and consumers) and received broad support when we consulted on them. The standard required for admission set out in the Threshold Standard is clear and transparent. This standard will be applied by SQE assessors, all of whom will be qualified solicitors. Assessment questions will be written and reviewed by solicitors, to ensure they are valid and set at the right standard for day one competence. Similarly, the Angoff panel<sup>10</sup> will be composed entirely of solicitors.
85. We conducted a further review of the legal knowledge required to be demonstrated at point of admission during the development of the SQE to make sure it was sufficiently clear. We did this through feedback from:
- academic and training providers at our December 2018 Conference (attended by 97 providers)
  - the SQE Reference Group
  - Kaplan's solicitor subject matter expert question writers
  - A survey posted on our SQE LinkedIn group (which received 50 responses).
86. We made a number of technical amendments to the functioning legal knowledge required for the SQE assessments in light of the feedback from stakeholders<sup>11</sup>. Examples of amendments include:
- we have added further detail to the core principles of tort.
  - we have expanded the section on core principles of trusts law from four section areas to ten, ensuring coverage of inter vivos trusts as well as will trusts.

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<sup>10</sup> This is a method of Standard Setting where a panel of trained judges provide an estimate of the proportion of minimally competent candidates who would get each item correct. The information is used in setting the pass mark.

<sup>11</sup> Note that we are currently undertaking a technical exercise to update the Statement of Legal Knowledge in the Statement of Solicitor Competence so it is aligned with the functioning legal knowledge required for the SQE assessments following the stakeholder input set out at para. 88.

- we have included the offence of fraud, with associated detail, under core principles of criminal liability
  - we have particularised offences under core principles of criminal liability by inclusion of the section numbers of the Act where appropriate to provide greater clarity
  - we have refocussed the public law section to provide a practical rather than a theoretical approach to constitutional law and a context for EU law which will accommodate changes in the UK's relationship with the EU.
87. As is appropriate, SQE development has been, and continues to be, informed by expert advice.
- Kaplan have appointed an Advisory Board of world leading psychometricians in professional assessment for licensure:
    - Dr David Swanson<sup>12</sup>
    - Dr Susan Case<sup>13</sup>
    - Richard Wakeford<sup>14</sup>
  - We have appointed Geoff Coombe, previously executive director at the AQA (one of the national GCSE and A level exam boards) as the independent reviewer of the SQE. His responsibility is to advise on the development and running of the SQE.
  - We also appointed Kiran Sanghera (from the Standards and Testing Agency, Department for Education) as our independent psychometrician to review SQE2 pilot results. This role will continue in the live assessments
  - In the course of the SQE's development, we were advised by AlphaPlus (on assessment design)<sup>15</sup>, the Bridge Group ( who continue to advise us on diversity impacts)<sup>16</sup>, and Economics, Policy and Competition (EPC) (on the economic impact assessment of our proposals)<sup>17</sup>.

## SQE1

### SQE1 pilot

<sup>12</sup> American Board of Medical Specialties, Chicago, IL.

<sup>13</sup> Formerly, National Conference of Bar Examiners, Madison WI.

<sup>14</sup> Hughes Hall, University of Cambridge.

<sup>15</sup> [AlphaPlus Report](#)

<sup>16</sup> [Bridge Group Report](#)

<sup>17</sup> [EPC Report](#)

88. We piloted SQE1 in March 2019. The findings and our response to the pilot can be found on [our website](#). Kaplan have also published a more [detailed analysis of the pilot](#). More than 316 candidates completed the whole pilot, in 42 test centres in England and Wales and abroad. The demographic characteristics of the candidates were broadly representative of the profile of candidates on the LPC. The pilot model was of three 120 FLK question papers. The potential for two papers of 180 questions each was also evaluated. In addition legal research and writing skills were tested through:
- two legal writing exercises, where candidates had to explain to a lay client the meaning of a statute or legal resource
  - one legal research exercise, where candidates had to use a range of resources (both relevant and irrelevant) to advise a client.
89. The inclusion of a skills assessment in SQE1 addressed some employers' wish for a basic level of legal skills to have been taught and assessed before QWE.

### **SQE1 pilot findings**

90. The pilot tested whether the SQE1 assessment design was fair, reliable and appropriately robust. Both Kaplan<sup>18</sup> and our independent reviewer<sup>19</sup> confirmed that the pilot was a useful and valid exercise that achieved our aims.
- It showed it is possible to design a robust, manageable assessment of functioning legal knowledge.
  - The majority of pilot candidates were positive in their feedback.
  - The operational aspects of the pilot went well.
91. In the light of the pilot, Kaplan and our independent reviewer recommended changes in two areas.
- They recommended amending the design of the FLK assessments from three 120 question assessments to two 180 question assessments.
  - Kaplan also reported that the pilot results did not give a sound basis for proceeding with the proposed assessment of skills in SQE1.
92. Amending the design of SQE1 from three 120 question assessments to two 180 question assessments does not affect curriculum coverage. However, moving to two assessments will improve the reliability and accuracy of the assessment, so we can be more confident about pass/fail decisions. This is

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<sup>18</sup> [Kaplan report on SQE1 Stage Pilot](#). See also [The Solicitors Qualifying Examination Pilot of the Assessment of Functioning Legal Knowledge: a psychometric and statistical analysis](#)

<sup>19</sup> [Report on SQE1 Stage Pilot](#). See also [The Solicitors Qualifying Examination Pilot of the Assessment of Functioning Legal Knowledge: a psychometric and statistical analysis](#)

critical in a national licensing exam where those who pass are granted reserved rights to practise and so must be fit to do so safely and effectively in order that consumers are protected, in line with the Legal Services Act's regulatory objectives.

93. Kaplan also looked at the impact of compensation<sup>20</sup> in moving to a model with two rather than three pass/fail points. They found that the extent of compensation between subject areas was limited. Good candidates tend to do well overall and bad candidates badly.<sup>21</sup>
94. We found differential performance in the pilot, across both FLK and skills, by binary ethnicity. The data on performance by BAME candidates should, however, be treated with caution. The sample size for the pilot was relatively small and there were a range of other confounding variables. There was no evidence that the differential performance was due to the design of the assessments or the assessment tasks. We also know that this is a problem across higher education and other professional assessments. But the pilot did show that this is an issue which we must monitor in the live assessments. See the section on EDI at paragraphs 380-451 and the draft EDI Risk Assessment at annex 4 for further information.

### **SQE1 skills assessment**

95. The fundamental problem with the SQE1 skills assessments was that the small number of skills exercises included in the assessment did not enable sufficiently reliable or accurate pass/fail decisions. This means that we could not be sufficiently certain that everybody who passed had met the standard of a competent day one solicitor. The standard for the SQE is an objective standard which all candidates must demonstrate to be admitted as a solicitor. This is important for consumer protection, in line with the regulatory objectives.
96. An additional problem with the skills assessment that we piloted was that it was not set at the level of a day one solicitor. It was set at the level of 'a person working in an unqualified capacity in legal services' because we expected, in many cases, that candidates would take the SQE1 assessment before they started their QWE and before they were ready to qualify as a solicitor. The pilot found that this level was open to interpretation as it could mean different things to different people. So there was a risk that, if we used this standard in the live assessments, it would be interpreted inconsistently or inappropriately. Alternatively, there was the risk that we would set it at an inappropriate standard because views would likely differ amongst stakeholders on the standard required.
97. In view of the small number of skills assessments in SQE1 and consequent inaccuracy of pass/fail decisions made as a result of them, Kaplan

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<sup>20</sup> Compensation is where poor performance in one area can be compensated by a better performance in a different area, so that overall a candidate passes the assessment.

<sup>21</sup> [Kaplan report on SQE1 Stage Pilot s4.1.2 and Appendix 2](#); See also [The Solicitors Qualifying Examination Pilot of the Assessment of Functioning Legal Knowledge: a psychometric and statistical analysis](#)

recommended not assessing skills in SQE1 at all, but instead relying on the skills assessments in SQE2.

98. We know that some employers value the assessment of skills at SQE1 stage. So over the autumn of 2019 and early 2020, we discussed alternative approaches with Kaplan and stakeholders.
- We held roadshows around the country, in London, Cardiff, Leeds, Manchester and Birmingham, where we spoke to both small and large firms.
  - We met with individual representative groups including the Law Society, the City of London Law Society and a range of groups representing the diversity of the legal community.
  - We consulted with our SQE Reference Group twice on this issue.
  - We posted a survey on our SQE LinkedIn group which attracted 29 responses.
  - We discussed it with the delegates at our December 2019 SQE conference.
99. Through our engagement, we narrowed down the options to:
- removing skills from SQE1 and relying on SQE2 to assess the full range of skills necessary to practise as a solicitor
  - adding a skills assessment to each of the FLK assessments with a single pass/fail point across the FLK and skills questions. The skills element would count for 10% of the overall mark. And it would be set at the threshold level of a day one solicitor, not at the lower, pre-admission level used for the pilot.
100. Those, mainly city, firms who are planning to introduce a pre-QWE training course for their trainees, including both SQE1 and 2, preferred removing skills assessment from SQE1.
101. In general, firms who intend to employ trainees after SQE1, and who will present their candidates for SQE2 during their QWE, have expressed a preference for including skills in SQE1. They tell us that they would prefer candidates to have been assessed in basic legal skills before they recruit them into the workplace. They say that these skills are currently assessed on the LPC and removing them from SQE would be a retrograde step. Several firms who expressed a preference for the retention of a skills assessment in SQE1, typically smaller firms, also told us that, if we remove skills from SQE1 they would require candidates to have passed both SQE1 and SQE2 before starting their QWE. Other firms confirmed that they test skills as part of their usual recruitment processes.

102. If candidates who had taken both parts of the SQE were preferred, some candidates would need to commit to paying for both SQE1 and SQE2 before they knew whether they had secured a work placement. It could also risk candidates feeling that they need to attend an LPC-type course covering SQE1 and SQE2 before they start their QWE. This would increase cost and would mean that candidates could not take advantage of the cost savings of learning the skills needed for SQE2 on the job. If this became common practice, it would perpetuate one of the problems with the current system.
103. It is however worth noting that despite concerns about candidates starting their work experience without strong legal skills, our evidence from firms who have recruited candidates on apprenticeships say that they see their legal skills developing rapidly in the workplace.
104. The advantages of removing skills from SQE1 and assessing the full range of skills in SQE2 are that:
- SQE1 will be cheaper, easier to administer and more robust
  - the results process will be quicker.
  - it will give candidates the opportunity to develop the necessary skills on the job rather than through costly training.
105. Having considered the evidence from the pilot and the range of stakeholder views, our Board has decided that it is not justifiable to include a skills assessment in SQE1 for the following reasons.
- The purpose of the SQE is to ensure that those we admit demonstrate the high standards required for practice as a solicitor, and the means of assessment should be those that are proportionate to achieve that objective. It is not part of the purpose of SQE to assess skills required for individuals practising in a non-qualified capacity. Those skills will inevitably vary from role to role, and firm to firm.
  - Should businesses have skills requirements for non-qualified staff, the proper place to assess their requirements is through their own recruitment and selection processes.
  - Kaplan have advised that it would not be possible to have a separate, reliable assessment of SQE1 skills set at a lower level without requiring more assessment points, which would be costly. It is possible to have a smaller assessment of SQE1 skills, attached to the FLK assessments, but this would have to be set at admission standard. If SQE1 skills were to be set at admission standard, that would duplicate SQE2 skills and would therefore be unnecessary.
  - Given that we expect most candidates will attempt SQE1 some time before admission, and may need some work experience to help develop those skills, an SQE1 skills assessment set at

day one solicitor standard could create a barrier for which we have no regulatory justification.

- This barrier may disproportionately disadvantage candidates who need access to work experience to develop professional communication skills.
- The SQE1 skills assessment would increase the cost and burden of the SQE without a clear regulatory justification.

### Single best answer multiple choice questions

106. The FLK Assessments in SQE1 will consist of multiple-choice, single best answer questions. This has been one of the most controversial aspects of the design of the SQE for our stakeholders. Stakeholders are concerned that the use of multiple-choice questions is not an appropriate way to assess candidates' competence and that it will 'dumb down' the solicitors' qualification.
107. Our reasons for wishing to use single best answer multiple choice questions are that they can test the cognitive skills we want to test, can be objectively marked and can test the breadth of the curriculum. Essay-type questions cannot test the breadth of the curriculum and cannot be objectively marked. Short answer questions could test the breadth of the curriculum but could not be objectively marked.
108. Some stakeholders suggest that we should not use multiple choice tests because they do not reflect the work that solicitors do. Some stakeholders suggest instead that we should require candidates to demonstrate their functioning legal knowledge through essay-type questions. But we do not think this is a helpful analysis. Solicitors do not write essays in the course of their practice. We want to test specific cognitive skills and the evidence tells us that single best answer multiple choice tests can do this. We will test simulations of solicitor work through SQE2.
109. The expert evidence we have in favour of multiple-choice questions for assessing functioning legal knowledge is strong. In their advice to us, [AlphaPlus](#) stated: "The evidence regarding the use of objective tests (generally multiple-choice tests) in contexts and qualifications similar to this is strong: They are used in comparable contexts, as indicated by our case studies and experience of other similar qualifications. They can be used to assess higher order skills, as evidenced by a review of published literature and examples, mainly from the medical sciences. They have been shown to be reliable in this context."
110. Multiple-choice questions are widely used in assessment in other professions (for example in medicine, pharmacy, accountancy). They are also used in the legal context, both in a university setting and in high-stakes licensing examinations (for example within the LLB, on the LPC, Bar Professional Training Course and US Multi-state Bar Exam, which is used by 33 US states and jurisdictions including New York). It is correct to note, as some stakeholders do, that in the US (unlike in England and Wales), attorneys must hold a law degree. However, it does not have to be from a

US jurisdiction, and our requirements for admission include a degree or equivalent. What is critical for the SQE is that we have identified all the competences required for practice as a solicitor in the Statement of Solicitor Competence and they are assessed across SQE1 and SQE2. Using single best answer multiple choice questions in the SQE brings admission to the solicitor profession in England and Wales into alignment with best practice in professional assessment.

111. In their 2020 advice to us, Bridge Group said: “We remain satisfied that single best answer tests (SBA), conditional on enough care and attention being paid to question setting and cultural context, are as objective an evaluation methodology as possible (ie not subject to differential performance by background, or not subject to examiner bias). SBA tests have been identified as an accurate means of assessing higher levels of knowledge such as decision making, data interpretation and problem solving.”
112. The emphasis in wider discussion on the use of multiple-choice questions has led to the misapprehension that multiple-choice questions are the only method of assessment in the SQE. Multiple-choice questions cannot be used to assess the full range of skills set out in the Statement of Solicitor Competence. But they can be used to test candidates’ functioning legal knowledge as we explain below. The skills needed to practise as a solicitor will be assessed through a range of skills based oral and written assessments in SQE2.
113. The legal knowledge curriculum to be assessed through the FLK in SQE1 includes all the current Foundations of Legal Knowledge required to be taught on the QLD/GDL and the core subjects of the LPC, with the addition of Conflict of Laws<sup>22</sup>.
114. The FLK assessment integrates substantive and procedural law. It is designed to assess candidates’ ability to:
  - characterise the nature of a legal problem (each of the two FLK assessments covers a range of legal topics and candidates will need to decide the area of law the question is about)
  - identify relevant legal principles
  - apply legal principles to factual scenarios similar to the type of cases which a newly qualified solicitor might encounter in practice
  - reach a decision, for example on a point of advice, or next steps in a transaction, or whether a desired outcome can be legally achieved
  - offer explanatory advice.

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<sup>22</sup> Because of the increasingly international nature of legal practice.

- perform relevant calculations for instance as to tax liability
115. Single best answer multiple-choice questions:
- can measure the cognitive skills we wish to test effectively<sup>23</sup>
  - provide better assurance of a candidate's breadth of knowledge than a small number of essay-style questions: doing three essay questions on a topic increases the risk that a candidate 'gets lucky' on the subjects that come up in an exam and does not in fact have the range of knowledge we expect of a solicitor
  - can be objectively marked, in contrast to essay style questions where there is an element of subjectivity in the marking
  - enable us to adopt modern psychometric processes, to ensure a high level of accuracy in assessment decisions and consistent assessment over time, across successive sittings and between different candidates.
116. Overall, they will contribute to a high quality, rigorous assessment.
117. To realise these benefits, the questions must be well written. Single best answer multiple-choice questions require expert drafting to make sure they properly assess the right cognitive skills, and not just knowledge recall. This involves significant investment of time and expertise. We have done this through the pilot. And we have published example questions which have been through this process.

## SQE2

118. Multiple-choice questions cannot assess all of the legal skills set out in the Statement of Solicitor Competence. These include, for example, the ability to present a reasoned argument and to communicate clearly in writing and orally. These are critical competences which all solicitors must have.
119. We will assess them through a suite of oral and written skills in SQE2. Our Assessment Specification includes an analysis of which elements of SQE will assess each of the competences in the Statement of Solicitor Competence so that across the SQE all competences are assessed.
120. Written skills assessments will be available in Pearson VUE test centres with more than 200 test centres in England and Wales, and further centres available internationally.
121. The oral skills assessments will be available initially only in England and Wales, in initially three and subsequently when demand increases, five centres.

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<sup>23</sup> Developing High Quality Multiple Choice Questions for Assessment in Legal Education, Susan Case and Beth Donahoe, Journal of Legal Education, September 2008.

122. Some stakeholders have suggested that the availability of oral assessment centres in a limited number of locations will disadvantage disabled candidates who may find it difficult to travel long distances or who may incur additional costs because of the need to travel the day before or to be accompanied on the journey. We considered this issue carefully when agreeing the contract with Kaplan.
123. Any risks of disadvantage for disabled students are mitigated by the fact that Kaplan has a clear obligation to make reasonable adjustments for disabled candidates. These will of course be specific to the individual circumstances and may include the provision to take the assessment over a longer period of time to minimise any fatigue from travelling. It can also include, subject suitable medical evidence, the provision to take the assessment in an alternative venue. We have oversight of this obligation to ensure Kaplan carry out that duty appropriately. Kaplan will report to us on reasonable adjustments requested and granted on a regular basis, and we will monitor their response to any requests received to make sure that these are handled appropriately.
124. The decision on the number of oral assessment centres needs to strike a balance between a number of factors.
- It is a cornerstone of the SQE that all candidates will take the same assessment so as to produce reliable and valid results. Oral skills assessments need to be standardised. This requires extensive preparation, training and monitoring and ideally includes the environment as well as the actual assessment. For this reason some comparable licensing assessments have only one oral skills assessment centre<sup>24</sup>.
  - Costs need to be kept to a minimum wherever possible. Any unnecessary costs will increase the candidate fee. A smaller number of assessment centres with a larger number of candidates is more cost efficient in terms of premises and staffing than a larger number of centres with smaller numbers of candidates. In the early years in particular, we expect candidate numbers to be relatively small, which is why we will limit the number of assessment centres to three until demand increases.
  - We recognise the need for a geographical spread of assessment centres to ensure accessibility for candidates.
125. We have carefully considered all of these factors and have concluded that three (rising to five) oral assessment centres is a good compromise. The centres will be in well-connected cities with good transport links. And they will be spread across England and Wales.

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<sup>24</sup> For instance the Royal College of General Practitioners Clinical Skills Exam takes place only at one venue in London. The Royal College of Psychiatrists also uses a single venue, (the English National Institute of Sport centre in Sheffield) for its skills exams.

## SQE2 pilot

126. The skills assessments in SQE2 will be:
- legal writing
  - legal research
  - legal drafting
  - advocacy
  - client interviewing and attendance note/legal analysis
  - case and matter analysis.
127. These skills assessments enable comprehensive assessment of the competencies specified in the Statement of Solicitor Competence. Throughout our stakeholder engagement we have found wide consensus that these are the appropriate core legal skills which aspiring solicitors must demonstrate at point of admission.
128. We decided to use the SQE2 pilot to test whether we could achieve a consistent standard at admission while allowing candidate choice within the assessment. One of the aims of the pilot was to evaluate the extent to which SQE2 could incorporate specialisation while still performing its function of being a credentialing exam for a generic qualification with a universal standard. We evaluated three options:
- specialisms only: candidates would take legal skills assessments in two contexts of their choice.
  - uniform exam: candidates would take the same exam, which sampled across all legal skills and all contexts.
  - common core: candidates would take an exam combining one context of their choice with a sample of all skills and all contexts. The aim was to test using the common core as a yardstick to measure the difficulty of the specialisms and so arrive at a universal standard even though candidates were not taking the same assessments.
129. Kaplan ran a pilot in December 2019. The pilot involved 167<sup>25</sup> candidates across two locations. We had two cohorts of candidates: 97 candidates took business as their specialist context and 79 candidates chose criminal litigation. Candidates took seven skills assessments (or 'stations'<sup>26</sup>) in a

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<sup>25</sup> 190 candidates sat at least part of the pilot but only 167 completed it and our analyses focussed on the 167 full participants.

<sup>26</sup> A station is an individual assessment task, such as undertaking a piece of advocacy or drafting a document.

common core, and they took a further seven stations in either business practice or criminal litigation.

130. SQE pilot candidates were selected to be, as far as possible, representative of those who will sit the SQE. Applications were encouraged from groups protected under the Equality Act. The analysis of the pilot data shows a similar distribution of demographic characteristics among pilot candidates to those taking the LPC.
131. Candidate numbers were not as high as for the SQE1 pilot – SQE2 demanded a greater time commitment. However, they were higher than for some pilots of similar national exams<sup>27</sup>. The Bridge Group commented: “We are reassured by the approach to data collection and analysis in the SQE1 and SQE2 pilot studies, considering the specific metrics collated and the way which the relationship between these and performance has been scrutinised. We recognise some stakeholders’ challenges around sample size, but also appreciate that large samples in such studies are typically impractical.”
132. Candidates in pilots always behave differently from candidates in a live exam. This and the inevitable challenges around sample size mean that it would not be appropriate to rely solely on pilot data in making decisions about the design of a national exam. Our decisions about SQE design are therefore based on the results of the pilot, data from the QLTS, the expert views of the Kaplan Advisory Board<sup>28</sup>, the SQE Independent Reviewer<sup>29</sup> and the SQE External Psychometrician.
133. The QLTS has been running since 2011 with assessments similar to those to be introduced for SQE, namely a single best answer multiple choice test and legal skills assessments. We have comprehensive data from these assessments covering more than 16,000 candidate attempts spread across 19 multiple choice tests and 18 legal skills exams. Kaplan’s Advisory Board examined both the data from the pilot and the QLTS data.

### **SQE2 design findings**

134. Through the pilot and through our analysis of QLTS data, we explored a number of facets of SQE2 assessment design and performance, the most significant of which is the question of the uniform or optional model. These are discussed below.

### **Compensation**

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<sup>27</sup> For instance the pilot for the GPs’ Clinical Skills Assessment (the equivalent of SQE2) was held in September 2006 and involved 98 participants. The mandatory exam for all GP trainees was implemented in 2007.

<sup>28</sup> See para. 89 for details of members.

<sup>29</sup> [SQE2 independent reviewer report](#)

135. The assessment model we piloted required candidates to attempt 14 different stations, resulting in a single overall mark. The reason for this model is that it provides the datapoints to enable a pass mark to be set with sufficient accuracy and reliability. But it does mean that candidates can compensate for a weaker performance in one skill by a stronger performance in another.
136. As with the SQE1 pilot, Kaplan looked closely at compensation effects in the SQE2 pilot. It produced an analysis of candidate performance across all skills for both cohorts (criminal and business). This showed that while some compensation occurred, it was not very common and/or marked. In general, good candidates tended to do well in all skills and weak candidates tended to do poorly. As the Independent Reviewer noted: "...while some limited compensation between skills did occur, it was not pronounced". Our advisors informed us that this finding about compensation is not unexpected and is replicated in other professional licensing exams.
137. Kaplan looked particularly closely at compensation in advocacy, because rights of audience are a reserved activity. The results from the pilot again showed that there was an element of compensation, but it was not marked. We did not set a pass mark for the pilot. However had we done so and calculated it in accordance with the methods to be used in the live exam, no candidates taking the business specialty would have passed the assessment and scored less than 50% on advocacy. One candidate taking the criminal specialty would have passed with less than 50% on advocacy. Their mark was 48%.
138. A possible way to mitigate the risk of compensation is to set a minimum required mark in, for instance, advocacy. This would prevent candidates passing overall despite a very low mark in particular areas. Kaplan has explored this option, but on the basis of the pilot results, and experience in other professional licensing exams, advises against it. Minimum pass marks have significant disadvantages because marks for sub-sections and pass marks derived from them are significantly less reliable and less confidence can be placed in them because, as they are based on fewer assessment points, they will achieve lower levels of reliability and precision than the exam as a whole. There is insufficient evidence that the extent of compensation observed justifies this approach at present. Our External Psychometrician advises that the compensation between skills is not substantial enough to warrant setting individual thresholds for particular skills.
139. Kaplan and the Independent Reviewer both recommend proceeding with a design of SQE2 in which there is one pass mark for the whole of SQE2 and no minimum station marks. However, and as they both recommend, the issue of compensation will be kept under review once the assessment is live.

#### Number of stations

140. Kaplan looked at the number of stations needed for reliability. There were 14 stations in the pilot and the reliability was surprisingly good. Here Kaplan drew on data from QLTS and on the wider experience of its

psychometricians in other professional licensing exams and pilots. Reliability is often inflated in a pilot because there will be wider range of candidate motivation and therefore a wider range of scores than in a live exam. Kaplan's advice is that 14 stations would be on the borderline of what is acceptable, 18 would be ideal from a psychometric point of view, but 15/16 would be adequate to achieve sufficiently precise outcomes. The independent reviewer suggests at least 15 stations are needed and our external psychometrician recommends 16 stations, for reliability. We have proposed a final design based on 16 stations.

### Differential attainment

141. Kaplan did both univariate and multivariate regression analyses of candidate performance in the pilot by protected characteristic. In considering the results, it should be remembered that candidate numbers were small in some groups, making it unlikely that statistical significance would be found in relation to those characteristics, that characteristics were self-declared, and that there were substantial confounding variables.<sup>30</sup>
142. The univariate analysis showed no significant difference overall between men and women, but that women significantly out-performed men in the criminal specialty. White candidates significantly out-performed those of BAME ethnicity. The multivariate analysis showed that binary ethnicity became a much less significant predictor of performance in the legal skills when performance in the multiple-choice test was entered as a variable. Candidates' scores in the multiple-choice tests which was included in the SQE2 pilot was the single largest predictor of performance (explaining 62% of score variance in the business group and 57% in the criminal group).
143. While we recognise that this pattern of differential attainment by ethnicity is consistent with current experience in assessments in the legal sector and more widely<sup>31</sup> it is nevertheless of concern and we plan to commission research to understand better the causes of the attainment gap. We have seen no evidence that the assessment methodology or any assessment processes are intrinsically biased. Kaplan will be introducing a comprehensive package of measures to minimise any risk of unfairness to candidates from minority protected groups. This will include:
  - appointing external expertise to advise on these issues
  - seeking to recruit a diverse group of assessors
  - diversity training for assessors, markers and question writers, including on issues such as the language of questions or unintended cultural bias
  - training for assessors. We are aware of the different views about unconscious bias training. We will look at available literature and work done by comparable professional licensing

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<sup>30</sup> Confounding variables are variables which appear to be causing a predictive effect when in reality the true cause is something else. For instance, it might appear that the 'true' predictor of score variance was ethnicity when in reality it was completion of the GDL.

<sup>31</sup> [See SQE Briefing, paras 79 - 89](#)

exams to make sure we proceed with the most effective form of diversity training

- monitoring outcomes by assessor. Unconscious bias could theoretically manifest in the oral assessments where assessors have live interactions with candidates. With the large data set available as a result of introducing a national exam we will be able to monitor outcomes by assessor to see if there is any statistical evidence of this bias taking place. Similar studies have been conducted by comparable exams such as the Royal College of General Practitioners Clinical Skills Assessment<sup>32</sup>
- statistical analysis of individual questions to check for patterns of differential performance at item level<sup>33</sup>
- statistical monitoring and analysis of the performance of protected groups under the Equality Act 2010.

144. There were no differences in performance by disability in SQE2 skills. However only 12 candidates out of 167 declared a disability under the Equality Act 2010, which were too few for any conclusions to be drawn. Ten candidates out of 167 sat with reasonable adjustments. The adjustments included additional time, individual/smaller testing rooms, enlarged font/screen magnifier and stop-the-clock rest breaks.

### Uniform exam, common core or specialisation?

#### What does SQE2 assess?

145. The primary purpose of the SQE2 assessment is to assess candidates' legal skills. However, legal skills can only be assessed through the vehicle of legal issues, which we have grouped together into five "legal contexts". They reflect the reserved activities, with the addition of Business organisations, rules and procedures, because it is such a large area of practice<sup>34</sup>. As stated above, the assessed skills are writing, drafting, case and matter analysis, research, advocacy and interviewing and attendance note/legal analysis<sup>35</sup>.
146. This means that SQE2 assesses both communication skills and the skill of applying legal knowledge accurately to a factual context. For example, a competent client interview includes the ability to communicate in a way the

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<sup>32</sup> Mei Ling Denney, Adrian Freeman and Richard Wakeford, MRCGP CSA: are the examiners biased, favoring their own by sex, ethnicity, and degree source? *British Journal of General Practice* 2013; 63 (616): e718-e725. DOI: <https://doi.org/10.3399/bjgp13X674396>

MeiLing Denney & Richard Wakeford (2016) Do role-players affect the outcome of a high-stakes postgraduate OSCE, in terms of candidate sex or ethnicity? Results from an analysis of the 52,702 anonymised case scores from one year of the MRCGP clinical skills assessment, *Education for Primary Care*, 27:1, 39-43, DOI: [10.1080/14739879.2015.1113724](https://doi.org/10.1080/14739879.2015.1113724)

<sup>33</sup> Through DIF (differential item functioning). This type of statistical analysis is not currently used on the QLD/GDL/LPC and is an example of the enhancement of assessment practice through the SQE.

<sup>34</sup> The contexts are: business organisations rules and procedures, property practice, wills and intestacy, probate administration and practice, dispute resolution, and criminal litigation.

<sup>35</sup> Although there is no separate assessment called negotiation, all sittings of SQE2 will contain at least one assessment involving negotiation.

client can understand and which builds trust and confidence. But it also includes the ability to use legal knowledge to identify the likely legal issues and elicit the facts relevant to those issues: both client handling skills and the ability to apply legal knowledge are required. Similarly, in advocacy, a candidate must present their argument using appropriate language and a clear structure. But they must also be able to apply relevant legal principles correctly in order to formulate an argument supporting the decision they are asking for. And throughout all this, candidates must correctly identify any issues of ethics and professional conduct and exercise judgement to resolve them honestly and with integrity.

147. This is reflected in the proposed weighting of the assessment criteria for all of the SQE2 assessments, which is 50:50 application of the law and skills. And it answers one of the concerns that stakeholders have that the ability to apply legal knowledge is assessed only through the single best answer multiple-choice questions in SQE1. In fact, the ability to apply the law correctly and comprehensively is required in both SQE1 and SQE2.

#### What did we originally propose?

148. Because few law firms practise across the full range of legal services, trainee solicitors start to specialise before admission through their choice of where to train. When we consulted on SQE in 2016, we recognised this by proposing an assessment design which gave candidates the opportunity to choose two out of the five legal contexts within which to be assessed.
149. However, Kaplan were concerned about whether a consistent standard could be achieved in SQE2 if candidates had a choice of contexts. So, we decided to use the SQE2 pilot to test whether we could arrive at a uniform standard where candidates have a choice of specialism in which to take their assessments. If successful, this would enable us to make sure that candidates could be assessed fairly against the same standard, even though they were taking different assessments. The pilot was designed to explore three possible designs for SQE2:
- a) **Specialisms only:** candidates would take legal skills assessments in two areas of legal practice (or contexts) that they could choose from a list of five (broadly, the reserved activities and business law and practice).
  - b) **Common core:** candidates would take an exam combining one practice area of their choice with a sample of all skills in the five contexts.
  - c) **Uniform exam:** candidates would take the same exam, which sampled across all legal skills and all five contexts.

#### Conclusions about uniform exam, common core or specialisms

150. The pilot found that there was no clear pattern of correlation between candidates' performance on their specialisms and the common core. Some candidates who performed well in their specialist area performed worse in the common core and vice versa. The common core did not function effectively as a yardstick by which the difficulty of the specialisms could be measured. It could not be used as the basis for setting a uniform standard where candidates had a choice of contexts in which to take their

assessments. Legal skills did not appear to be sufficiently generic that they were directly transferable from one legal context to another.

151. In addition, Kaplan, the Independent Reviewer and the External Psychometrician identified three areas of risk inherent in designs involving candidate choice of specialisms in which to take their assessments (common core and pure specialisms):
- a) **Question writing:** It is always difficult to be sure that all questions are set at exactly the same level of difficulty. Comparing levels of difficulty precisely between different subjects is particularly difficult<sup>36</sup>. In a uniform examination, all candidates take the same questions and so the risk of inter-candidate unfairness within the same assessment is eliminated. In an examination where there is candidate choice as to contexts, the problem is that different candidates will take different questions. This creates a risk (which doesn't exist in the uniform model) that different candidates will be set questions which are not of exactly the same level of difficulty.
  - b) **Marking:** A key challenge of any assessment is to ensure that marking is as consistent as possible. Models involving candidate choice make this more difficult, because markers are marking different cohorts and different assessments. Markers' experience of candidate performance can influence their assessment judgments, and so they may be differentially affected by the performance of different cohorts taking different assessments. The risk of variable marking may be mitigated by training, but training will not completely eliminate it.
  - c) **Standard setting:** We propose using the Borderline Regression method to set the standard for SQE2 (see annex 4). This method becomes less valid with lower cohort numbers. In the early days of the SQE, it is likely we would have low numbers taking at least some of the specialist options. The more choice, the lower the numbers in the options. Alternative methods are at least theoretically possible. But they are not as well established or widely used as Borderline Regression. Borderline Regression has been upheld by the courts.<sup>37</sup>

152. Kaplan's recommendation (including that of their Advisory Board<sup>38</sup>), of the SQE Independent Reviewer and of our External Psychometrician was, therefore, that a uniform exam is the only way of establishing a consistent universal standard at admission and so ensuring fairness to candidates. Given the generic nature of the solicitors' qualification, a universal exam,

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<sup>36</sup> See for instance Ofqual's paper of December 2015, "[Comparability of Different GCSE and A Level Subjects in England: An Introduction](#)" and the set of six working papers accompanying it.

<sup>37</sup> R on the Application of BAPIO Action Ltd [Claimant] v Royal College of General Practitioners [First Defendant], in the High Court of Justice, Queen's Bench Division, The Administrative Court. 10<sup>th</sup> April 2014. EWHC 1416 (Admin) 2014 Available at <https://www.rcgp.org.uk/news/2014/may/~/-/media/Files/News/Judicial-Review-Judgment-14-April-2014.ashx>

<sup>38</sup> See para. 89 for the members of the Kaplan Advisory Board.

testing the legal skills sampled across practice contexts is also the model best designed to ensure consumer protection. This is in line with the regulatory objectives to protect and promote the public interest and the interests of consumers and to encourage an independent, strong, diverse and effective legal profession, by making sure that only those candidates who are competent across the range of practice contexts can be admitted as a solicitor.

153. The Independent Reviewer states: “The overwhelming evidence from a psychometric perspective is to have a universal model. This is backed up in the relevant academic literature and is the model usually followed by professional qualifications which lead to licensure. From a defensibility perspective, and in order to ensure fairness to all candidates, the evidence from the pilot is the SQE2 design should be universal, and while recognising this will not be some key stakeholder’s preference, the design must be able to withstand legal challenge”.
154. The Bridge Group also advised that “We support this decision for a uniform assessment, given that the potentially beneficial impacts on diversity of this approach outweigh those associated with optional assessment.” They also noted that “Reflecting on the disproportionate representation of some groups within some areas of law, the uniform assessment approach offers an important opportunity to counteract the effects of some candidates ‘selecting out’ of areas that are perceived to be aligned with particular demographic characteristics. Bridge Group research shows this career self-sorting to be a systemic challenge in many professions, including law, and is a significant factor contributing to differential pay, progression and attrition.”
155. While it is not a primary driver, a uniform examination is a less expensive assessment model.

### Stakeholder views

156. Throughout the autumn and winter of 2019/2020, we discussed the three options tested in the pilot with stakeholders. Their views were mixed.
  - The Legal Services Consumer Panel have a clear preference for a uniform design, and said they would be concerned by the optional model because assessment in some contexts would not provide adequate consumer protection that solicitors were competent to practise in all the areas where they acquired practice rights on admission.
  - Some stakeholders – particularly academics but also some professionals – accept that there is a clear regulatory justification for a uniform exam, because entry to the profession means that a solicitor can practise in all contexts and working environments, and that it could provide a more rigorous and consistent assessment of high professional standards.

- Some stakeholders are concerned that candidate choice would lead to over-specialised solicitors.
- Stakeholders representing ethnic minority practitioners tend to prefer the uniform model, as being demonstrably fair to all candidates.
- Assessment providers have confirmed that they can provide training for either model, but that their training courses would need to be longer for the uniform exam. Most providers think this will increase the length of their courses – albeit they are relatively short courses, compared to the LPC.
- Most firms would prefer a model involving candidate choice, because the uniform exam means training cost and resource would be used on developing skills not needed in their business.
- Some stakeholders (both firms and training providers) think a uniform exam does need classroom or online training and cannot be prepared for by traditional work experience in a single employer. They speculate that most candidates will wish to take SQE2 assessment as soon as possible after SQE1 assessment (so their legal knowledge is fresh in their minds) and that this makes it more likely that both SQE1 and SQE2 may be taken before QWE.
- Some stakeholders (both firms and training providers) were worried about the cognitive burden and stress for candidates of the uniform exam, because it tests them across a greater number of areas of law which they need to be able to remember.
- Some stakeholders think that providing materials/open book exams may mitigate the cognitive burden and the need for additional classroom preparation. Others are sceptical about whether these measures will make much difference.

157. We also ran an online survey in April 2020. We had 50 responses<sup>39</sup>. Again, views were very split. Headline findings from the survey were as follows:

- 36% of respondents preferred either the uniform exam or the specialisms, and 28% preferred the common core
- 43% of respondents thought the uniform exam would best support high professional standards, compared with 29% for each of specialisms and the common core

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<sup>39</sup> Responses were received, among others from: students/trainees (16%), training providers (26%) and law firms authorised to take trainees (36%).

- 67% of respondents said that the common core would affect training costs
- 89% of respondents said that the uniform model would affect preparatory training for SQE2
- 78% said they would pay for their candidates' preparatory training for SQE2.

### Conclusion on SQE2 design

158. Our Board decided that we should adopt a uniform model, for four reasons.
- It is aligned with the skills needed for the practice rights that solicitors acquire on admission, recognising that these may not be wholly generic and may vary between practice areas.
  - It is demonstrably fair to all candidates.
  - It meets our objective for the SQE of a consistent assessment of the high professional standards needed for practice as a solicitor, reflected in our Threshold Standard.
  - It supports our criteria of being valid, reliable, cost-effective and manageable.
159. It is also in line with the regulatory objectives to protect and promote the public interest and the interests of consumers and to encourage an independent, strong, diverse and effective legal profession. And it represents a consistent, fair approach to assessment in line with the principles of better regulation.
160. The SQE is not about ensuring that candidates are able to practise competently in specific roles or sectors. It supports the broad practice rights solicitors gain on admission. Although individual firms employ lawyers in specialised roles, solicitors' practice rights are generalised and allow solicitors to practise across all the reserved activities. Subject to their own assessment of practising within the limits of their competence, a newly qualified solicitor is entitled to work in any area of practice, doing any type of legal work, regardless of their previous training or experience. The SQE needs to test across all the core skills that are required in order to make sure that candidates can exercise these rights competently. Ensuring that those we admit have demonstrated they are able to practise competently across the range of reserved activities is a core responsibility in order to meet our regulatory requirement to protect consumers.
161. SQE1 assesses the FLK required for all the reserved activities. But it does not cover all the competences we specify in the Statement of Solicitor Competence. Many skills-based competences are assessed only in SQE2. And, of course, as stated above, core legal knowledge relevant to these areas is tested in SQE2. A knowledge of the legal curriculum can therefore be broadly and appropriately sampled across the SQE as a whole.

162. Most law firms do not practise (and therefore cannot offer work experience) across the range of reserved activities and in a uniform model this might drive the need for additional classroom or online training, which would increase the cost of qualifying as a solicitor. But, by the same token, if skills are not transferable, we cannot infer competence across all reserved areas of practice from competence in just two of them, and this presents a public protection risk. The best alignment, and the best guarantee of consumer protection, is by a uniform examination which assesses all candidates across the whole range of reserved activities.
163. In addition, the evidence from the experts is that even with all possible mitigations, the optional model carries with it a significant risk of unfairness, because we could not be sure that different assessments in different practice areas assessed candidates to the same standard.
164. For these reasons, the uniform model best achieves the primary objective for the SQE of assuring high professional standards on a fair and consistent basis, and best fulfils the regulatory objectives of protecting and promoting the public interest and protecting and promoting the interests of consumers; Given that the solicitor qualification is a general one, consumers, and the public more widely, are entitled to assume that all solicitors have met the same consistent standard and are competent to practise in whatever role they take up after admission – recognising that this may change over time.
165. We recognise that the uniform model means that candidates are more likely to need to develop their legal skills through a combination of QWE and classroom and/or online learning. This will add training cost – although there will be some saving of assessment cost. However, additional cost, or changes to training or recruitment practice, cannot justify an assessment model which may not assess candidates fairly or is not aligned with the practice rights conferred on admission as a solicitor.

### Data monitoring, analysis and publication

166. As stated, the Bridge Group advised that “The introduction of the SQE has the powerful potential to introduce greater transparency through the datasets that a standardised examination will generate. If collated and analysed effectively, this will generate dependable and comparable evidence (not available in the current fragmented system), to support all stakeholders to better understand, and to take evidence-informed action to advance, equality and diversity in the system.”
167. After each assessment we will collect and analyse data on the assessment for presentation to the exam board, and also for publication on an anonymised basis so as to help stakeholders understand and interpret the assessment results. This may include:
- Number of candidates and their demographic background including educational and socio-economic characteristics

- Performance of the assessment as a whole including key quality indicators such as co-efficient alpha (a measure of reliability of the assessment) and Standard Error of Measurement (SEM, a measure of the precision of the assessment)
- Pass marks
- Further equality analyses as appropriate e.g. multivariate regression analysis<sup>40</sup> and differential item functioning<sup>41</sup>
- Pass rate and pass rate by key characteristics protected under the Equality Act 2010 and by socio-economic group
- Further equality analyses as appropriate e.g. multivariate regression analysis<sup>42</sup> and differential item functioning<sup>43</sup>
- Candidate score distributions

168. Analysing data from individual assessments is helpful but it needs to be complemented by further analyses of larger data sets. Over time we will build up larger data sets covering more than one exam, so as to facilitate our analyses, including of equality issues. This larger data set will enable, for instance, analyses of the performance of disaggregated ethnic groups, where the numbers in any one assessment may be too small for this analysis to be meaningful. We will publish data (see below) to support candidate choice and increase competition and standards in the training provider market. Our approach to data publication will be robust, fair and transparent. It will be based on the following principles:

- Information will be as clear and accessible as possible.
- Candidate data will be anonymised
- Small data sets will be excluded
- Data will be quality assured before publication.
- Clear controls will be in place around publication
- We will regularly review our publication approach

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<sup>40</sup> Multivariate regressions analysis can be used to investigate the 'true' predictors of performance in a situation where there are overlapping variables.

<sup>41</sup> Differential item functioning can be used to look at whether particular questions are disadvantaging protected groups over and above any general differences in performance between those groups.

<sup>42</sup> Multivariate regressions analysis can be used to investigate the 'true' predictors of performance in a situation where there are overlapping variables.

<sup>43</sup> Differential item functioning can be used to look at whether particular questions are disadvantaging protected groups over and above any general differences in performance between those groups.

- We will use the data we publish to commentate on diversity and access to the profession where it is appropriate to do so.
169. We are still working up details of our data publication strategy and will publish more detail this autumn. Data that we will publish to help candidates make informed choices is likely to include (but may not be limited to) anonymised candidate performance and the following (where available and declared to us by the candidate):
- A-level results
  - Highest level inf education
  - Year of undergraduate degree
  - Institution of undergraduate degree
  - Undergraduate degree classification
  - Field of study
  - Whether they are already a qualified lawyer
  - Where they trained for SQE1
  - Where they trained for SQE2.
170. We have also started work on an options analysis for potential data publication models. We will work with stakeholders interested in using the data, for example, potential candidates, during autumn 2020 to explore their requirements to help inform our decisions on a final solution. We aim to have a system for data publication in place and ready to test by summer 2021.
171. We will review the effectiveness of our data publication approach through the overall SQE evaluation.

## Professionalism and ethics

172. Instilling a sense of core, shared, professional values in those seeking admission as solicitors is critical. This ensures that members of the profession take personal responsibility for upholding standards of competence and integrity within the profession, including, for example, reporting problems when they arise. And, in a profession which is built on trust, it is important that consumers and the wider public can have confidence not only that solicitors are competent to carry out their work but also that they will do so with integrity and professionalism.
173. Education and training play a key role in developing professionalism in aspiring solicitors and encouraging an ethical mindset and appropriate behaviours from the outset. Professionalism and ethics are embedded

throughout the new qualification system. We have taken measures to ensure that not only are they core parts of the SQE assessment but also to encourage education and training providers to understand and convey their central importance:

- “Ethics, professionalism and judgement” and the requirement to “act honestly and with integrity, in accordance with legal and regulatory requirements and the SRA Standards and Regulations” is the first competence in the Statement of Solicitor Competence. Its deliberate position reflects its importance. The Statement of Solicitor Competence underpins the new qualification, clearly setting out the competences we expect all solicitors to demonstrate. It provides the framework for the SQE assessments and the period of QWE.
- As well as giving candidates the chance to develop the competences in the Statement of Solicitor Competence and to prepare them for SQE2, the purpose of QWE is to expose candidates to real life client scenarios and business interactions. These bring with them a range of ethical questions and candidates gain experience of the way in which colleagues navigate these in practice. Solicitors and firms responsible for overseeing QWE will play an important role in role modelling appropriate professional and ethical behaviours. We will issue guidance to firms to make sure they understand the importance of this aspect of QWE and how they should approach the QWE sign-off.
- We expect all prospective solicitors to display high ethical standards and behaviours. And we will require the solicitor or COLP signing off their QWE to confirm that there are no issues which might affect the candidate’s character and suitability to enter the profession.
- Ethics and professional conduct will be examined pervasively across both SQE1 and SQE2. Questions involving ethical issues will not be flagged as ethical questions – we want to check that candidates are able to spot ethical situations as they arise. This better mirrors what happens in practice. The integration of ethics across the assessed curriculum represents a significant enhancement of the current position: ethics is not required to be taught on the QLD or GDL.
- The requirement for candidates to be assessed in ethics and professional conduct means that training providers will need to include it in the curricula for their SQE1 and SQE2 preparatory courses. We will work with training providers, through our community of interest, to make clear the importance of ethics and professional conduct in the SQE.
- This importance will be reinforced with feedback after every delivery of the SQE. After every delivery of both SQE1 and SQE2 we will publish generic feedback to training providers

and candidates. This generic feedback will always include an analysis of how candidates performed on issues of professionalism and ethics. This will include, as appropriate, both a narrative explanation of areas of strength and weakness and a statistical analysis. It may, if appropriate, include a suggestion that more attention needs to be paid to these issues by training providers and candidates to improve performance in the SQE.

174. Some stakeholders, including employers and training providers, have suggested that we should consider a stand-alone ethics exam. We have considered this suggestion as we can see the strength of the argument given the importance of ethical judgments for solicitors in practice. However, adopting a pervasive approach to the assessment of ethics and professionalism in the SQE with unflagged ethical questions and issues has significant advantages.
175. A separate ethics exam lacks validity because it suggests that professionalism and ethical behaviours are a separate subject, whereas in reality they need to be considered marbled through all aspects of a solicitor's practice. A pervasive approach to assessment of ethics with unflagged ethical questions assesses what is key to ethical practice: namely recognising the ethical aspect of decisions and advice in whatever context this arises and responding appropriately. Further, a separate assessment of ethics would need enough questions to make fair and reliable pass/fail decisions. This would mean a lengthy assessment which would increase the costs of the SQE significantly.
176. We know that some stakeholders are concerned that if we do not require a stand-alone ethics exam, candidates might qualify without an adequate appreciation of the ethical standards required of all solicitors and intrinsic to the profession. Low marks on ethics questions might be being compensated for by high marks in other areas. The evidence we have suggests that this kind of compensation should not happen in practice. We did not set a pass mark for the SQE1 pilot but if we had set a pass mark using the methods we will be using for the live SQE, all candidates who would have passed the assessment in fact scored higher marks on the ethical questions than they did on the rest of the exam. It is not possible to do the same kind of analysis for SQE2 because no separate marks are awarded for ethics. We consider SQE2 further below.
177. Because of the importance of ethics and professionalism and as part of our mitigation of risk, we will monitor performance in this area closely once the assessment goes live:
- After every delivery of SQE1 we will analyse issues of compensation statistically and specifically look at whether candidates with low marks on the ethics questions are passing the SQE. The results of this analysis will be reported to the SQE exam board. If there is cause for concern, we will review our approach.



- Kaplan will make sure that the policies and processes are being followed when developing, and administering the assessments for the SQE, while also demonstrating that all policies and processes are regularly reviewed and form part of its continual improvement process. They have appointed an Advisory Board to provide advice and guidance over the psychometric aspects. They will have in place process for continuous improvement and risk management.
      - We will initially check that adequate policies and processes exist for key activities associated with the development and administration of assessments. We will seek evidence from Kaplan that demonstrates policies and processes are being adhered to. As part of this, we may choose to examine the outputs of any or all of the processes. This will include but not be limited to:
        - minutes of meetings
        - content of training
        - the assessments.
182. We have rights under the contract to take action to address and remedy breaches.
183. In the lead up to the introduction of the SQE, we will undertake an audit to test Kaplan's readiness. This will cover:
- development of assessment materials
  - recruitment of assessors
  - delivery plans
  - support materials
  - internal quality assurance systems.
184. On an ongoing basis and at least once annually, Kaplan will carry out internal quality assurance and monitoring of its systems, policies, processes and working instructions. The focus will be on the quality of the outputs and reassessing and improving any processes which are underperforming or present a risk to the quality of the assessments.
185. We will carry out audits of Kaplan policies and processes for developing and delivering the SQE and a check to make sure such policies and processes are being followed. We will audit pre-assessment activities at least annually. Our audits will include desk-based reviews, observations and visits. We will also randomly review all assessment policies, processes and working instructions at least once in a set period.

186. We, and the Independent Reviewer, will observe and evaluate the live SQE assessments at least once a year.
187. In order to maintain a consistent standard across assessments and over time, we will also chair the Assessment Board for each SQE assessment, which will sign off the pass mark and verify that due process has been followed throughout the assessment process.
188. As stated, we have also appointed an Independent Reviewer and an External Psychometrician. These roles will continue when the SQE is introduced.

## Contract and risk management

189. We explained in our first application our rationale for appointing a single assessment provider for the SQE. You sought reassurance from us, which we provided, on this point during the first application. We explained that the main benefit is that a single provider means:
- a single set of consistent standards
  - all candidates will sit the same examination and there will be no opportunities for them to game the system by selecting what might be, or be perceived to be, the easier assessment provider
  - there are operational efficiencies in dealing with one provider, both for us and for candidates.
190. We also explained in response to your follow-up question during the first application how we would mitigate the risks associated with a single provider.
191. We explained that we had carefully considered different sourcing models and concluded that the appointment of a single assessment supplier, to deliver the SQE on our behalf, was most likely to achieve our objectives of assuring consistent standards of assessment and appointing the strongest supplier.
192. If we were to source multiple suppliers to deliver the SQE, we would have to establish a mechanism to ensure consistent and comparable performance standards across the different assessments. It would be harder to have statistically reliable assessments with a split candidate group, sitting different assessments. Having more than one assessment supplier, and a competitive market between them for candidates, would also run the risk that, in competing for candidates, they lower standards.

193. It would also extend the suppliers' financial risk because it would increase the uncertainty about candidate numbers and the timeframe in which they would recover their start-up costs. On a sector-wide basis, the creation of duplicate assessments would double or treble costs (depending on the numbers of assessment suppliers).
194. We explained that we had also considered and rejected sourcing one assessment supplier to deliver the SQE1 and one supplier to deliver the SQE2 because:
- the skills assessments are significantly more expensive to run than the knowledge assessments because they are more labour and resource intensive (requiring markers, role play actors, particular types of venues)
  - the variable costs for skills assessments increase in proportion with the number of candidates unlike the computer-marked, objective testing proposed for the FLKs
  - a contract for the practical legal skills assessments only was unlikely, therefore, to be commercially attractive because fixed operating costs and overheads could not be distributed across both types of assessments
  - splitting the sourcing in that way could also restrict our ability to make changes to the overall SQE design, make it more difficult to set a reliable and consistent performance standard, and make contract management of the suppliers more complex and resource intensive.
195. We continue to ensure robust risk management. We have included a range of mechanisms in our contract with the assessment supplier to enable us to monitor the performance of the assessment supplier and minimise the risk of appointing a single assessment supplier.
196. The contract includes a number of provisions that:
- give us protections against the financial instability of the assessment supplier, including:
    - an obligation on the assessment supplier to provide an annual report on its financial standing
    - an obligation on the assessment supplier to procure a parent company guarantee
    - an obligation on the assessment supplier to notify the SRA if there is a material change in its financial standing or that of the guarantor.
  - are aimed to ensure that the services provided by the assessment supplier represent value for money, including:
    - our agreement of candidate fees and of any subsequent changes to fees

- visibility of the assessment supplier's financial information
  - creation of an 'access and re-investment fund' where profits exceed an agreed cap.
- give us oversight of the assessment supplier to assure standards and the ability to remedy breaches in the delivery of the services, including:
    - approval of deliverables, including assessment processes and procedures, by ourselves
    - the right to spot-check, audit and enhanced monitoring
    - ability to implement a remediable plan process to remedy any failure to meet a target service level
    - service credit penalties for failure to meet critical service levels
    - the right to terminate with cause without payment.
197. We have robust contract management processes in place with Kaplan. Service levels are included in the contract and whilst in the development phases, this includes specific deliverables which must be delivered to specified timeframes and to agreed acceptance criteria.
198. We hold monthly contract meetings with Kaplan, where they report to us on:
- progress against milestone and deliverable plans
  - performance against service levels
  - other contract obligations
  - risks and issues.
199. In addition to the monthly contractual meeting we also hold the following strategic meetings:
- Six monthly meeting to discuss business development, continuous improvement and any matters referred for consideration.
  - Annual review meeting providing an overview of the supplier performance, and financials for the preceding year. Contractual clauses also provide assurances by requiring Kaplan to have in place.
  - Business continuity plans and disaster recovery plans.
  - Management and business systems for planning, internal quality assurance and control, and for identifying and managing risk.

200. Finally, in the event that Kaplan was no longer able to provide the service to the required standard there are termination clauses in place. This is supported by an exit management schedule which includes an agreed service migration plan to support the movement of the activity to a new supplier.

## Business continuity and future planning

201. Kaplan has robust business continuity plans in place. These plans are subject to our approval and oversight. Kaplan have been able to continue to operate during the recent Covid-19 pandemic and they are building arrangements into their future continuity plans for operating the SQE if another similar event occurs.
202. They are currently investigating the technical, logistical, legal, security, administrative and measurement issues for a range of options for dealing with a future global pandemic. These have not yet been concluded. But Kaplan has agreed that their priorities in dealing with a crisis while operating the SQE would be:
- the primary purpose of the SQE is protection of consumers of legal services by ensuring a consistent and appropriate standard at admission as a solicitor of England and Wales. The security and integrity of the assessment must therefore be maintained
  - Kaplan are committed to ensuring that the SQE can be administered to as many candidates as possible during a pandemic and are actively investigating alternative methods of delivery to ensure this
  - where the SQE in its current form cannot be administered, even with alternative methods of delivery, they will investigate an alternative form of assessment
  - Kaplan will only run exams which can be delivered safely under the guidelines of the UK government
203. Kaplan currently delivers the QLTS assessments which follow a similar format to the SQE. The MCT<sup>44</sup> (similar to SQE1) is currently administered at Pearson VUE test centres worldwide (in about 30 different countries) and nearly 150 test centres. The OSCE<sup>45</sup> (similar to SQE2) is administered only in London.
204. Kaplan have successfully delivered an MCT in July this year with social distancing. And they have arranged delivery of OSCEs, the legal skills assessments, in July and August 2020 with social distancing at all test

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<sup>44</sup> Multiple Choice Test

<sup>45</sup> Objective Structured Clinical Examination, skills assessment

centres. In addition, they are looking at other alternative methods of delivery for the QLTS, particularly in relation to the OSCE which is at present only administered in London. These methods would also be applicable for SQE. Under investigation are:

- Online delivery of OSCE oral assessments (the equivalent of SQE2 oral) with remote proctoring<sup>46</sup>.
- Delivery of OSCE written assessments (the equivalent of SQE2 written) at Pearson centres worldwide.

205. Kaplan has also been keeping in close contact with developments in administering similar exams in the UK and overseas, for example, the GPs qualification exams, and in the legal field with the LPC and the National Conference of Bar Examiners (responsible for the exams for admission as a lawyer in the US). Solutions in the US vary from state to state but include running exams with social distancing and allowing a limited licence to practice locally under the supervision of a qualifying attorney for those satisfying certain eligibility conditions

## Quality of SQE training

206. As we said in our first application, we will no longer approve or monitor training providers. Our experience of the current regime is that this has not prevented a wide disparity in performance. Work by the Quality Assurance Agency for Higher Education, Guild HE and Universities UK suggests maintaining consistent standards between universities and over time is problematic<sup>47</sup>. In 1993, the Law Society delegated assessment to universities. That assumed that assessments could and would be set at equal standards.

207. We know there has been significant, unexplained grade inflation in degree classifications<sup>48</sup>. We know pass rates vary on the GDL and LPC from below 40% to 100% but we don't know why. Students choosing providers do not have access to information about pass rates from current providers because it is our view that to provide this information could pose a risk to standards by acting as an incentive to providers to pass their candidates or provide more guidance on how to pass the assessment than might be appropriate.

208. Under the SQE, we will publish data on SQE performance by individual provider, which candidates can take into account in choosing where and how to study. We will do this by asking candidates to tell us where they did

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<sup>46</sup> Remote proctoring is designed to allow students to take an assessment on-line at home while attempting to ensure the integrity and security of the exam. These systems require students to confirm their identity and, during the exam, proctors monitor student behaviour to ensure they are not cheating.

<sup>47</sup> [Degree classification: transparent, consistent and fair academic standards](#)

<sup>48</sup> Office for Students analysis of degree classifications over time, December 2018; Law Society Statistical Analysis 2018, page 30.

their training. We will also include support and tips for candidates on questions to ask about when choosing a training provider in our online resources.

209. We have trademarked the term 'SQE' and this enables us to take action to prevent market abuses (such as publication of false pass rates or misleading advertising). The assessment specification sets out the curriculum being assessed and explains how it will be assessed. In accordance with LSB Statutory Guidance<sup>49</sup>, training providers have the flexibility to use their expertise "to determine how to deliver training, education and experience that meets the outcomes required".
210. We plan to establish a 'community of practice' to give training providers and firms the opportunity to ask Kaplan questions about the SQE assessments and to share experiences with each other. The community of practice will be launched in December 2020 with an initial meeting with interested stakeholders. We have already set up a facility for training providers to contact Kaplan with questions about the assessment.
211. The SQE should encourage training providers to drive up standards of training. Providers will have incentives to achieve the highest pass rates as these will be published. And if we are assessing the right things through the assessments, that will flow back into the course curricula and drive good quality training and, ultimately, high professional and ethical standards. In turn, this will encourage an independent, strong, diverse and effective legal profession that adheres to the professional principles, in line with the regulatory objectives.
212. We can also communicate to providers any areas where candidates are performing poorly so that providers can address these areas in their training. We can use this mechanism to emphasise areas of central importance, for instance we will always give feedback on performance in professional conduct and ethics. We have the flexibility to keep under review and amend the content of the SQE over time if we think it is necessary and to communicate any changes through the community of practice.

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<sup>49</sup> [LSB Statutory Guidance on Education and Training](#)

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## Section D – What is the nature, effect of and rationale for our proposed changes?

### SQE Assessment Regulations

213. The existing arrangements for admission for anyone wishing to qualify as a solicitor in England and Wales were approved by you in 2018 and are set out in regulation 1.1 of the SRA Authorisation of Individual Regulations (the SQE Provisions).
214. As stated, Regulation 1.1(a) of the SQE Provisions allows us to require intending solicitors to take a centralised assessment, prescribed by us, in order to qualify as a solicitor. This allows us to develop an assessment that will better meet the Legal Services Act regulatory objectives. The additional regulatory arrangements for which we now seek approval relate to how we will implement the assessment and are required in order to give effect to that criterion.
215. We propose to introduce awarding requirements for the SQE assessments. They will set out conditions that candidates must meet when taking the SQE assessment under regulation 1.1(a) of the SQE provisions. The awarding requirements are set out in the SQE Assessment Regulations.
216. The Assessment Regulations cover the following:
- the requirement for candidates to meet identification requirements before sitting the SQE
  - candidates' obligation to confirm they are 'fit to sit' before the assessment. This means they must declare that they know of no reason why their performance would be adversely affected during the assessment or why they may subsequently bring a claim for mitigating circumstances
  - the grounds and procedure for making an application for mitigating circumstances where candidates consider that their marks or performance in any SQE assessment have been materially and adversely affected by mitigating circumstances
  - details of behaviour which constitutes malpractice or improper conduct and the procedure for investigating an allegation of malpractice or improper conduct, including the consequences if malpractice or improper conduct is confirmed, and rights of appeal against the finding
  - the composition, jurisdiction and operation of the SQE Assessment Board

- provision for exemptions from the SQE, with no exemptions being granted from only part of FLK1, FLK2 or SQE2
  - the policy and procedure on reasonable adjustments
  - withdrawal from the examinations
  - the grounds and procedure for bringing a first stage and a second stage appeal against the decision of the SQE Assessment board.
217. The Assessment Regulations also include the requirements for passing the SQE:
- to pass the SQE candidates must pass both SQE1 and SQE2
  - SQE1 consists of two exams, FLK1 and FLK2. In order to pass SQE1 candidates must pass both FLK1 and FLK2 by obtaining the overall pass mark for both FLK1 and FLK2. FLK1 and FLK2 must be taken in the same assessment window
  - SQE2 consists of a single exam. In order to pass SQE2 candidates must obtain the overall pass mark for SQE2
  - candidates must pass SQE1 before they attempt SQE2
  - candidates must pass all SQE assessments within a six-year period of their first attempt.
218. No more than three resits of each of FLK1, FLK2 and SQE2 are permitted, with resits only being available to candidates who have failed, not to candidates who have passed but want to improve their mark
219. The provision of assessment regulations of this nature is standard practice in academic and professional exams. The content of the SQE Assessment Regulations is similar to the content of assessment regulations which are used in similar contexts, for example the LPC and the QLTS.
220. As stated, it is our role to make sure that both the public and employers can trust that newly qualified solicitors are fit to practise. We propose to introduce the SQE to:
- ensure high standards to protect the public and consumers of legal services, and consistency, fairness and transparency in the way that solicitors qualify
  - ensure high standards and integrity in the SQE assessment
  - enable the consistency and reliability of the assessments.
221. The introduction of the SQE Assessment Regulations will enhance the protections provided by the introduction of the SQE and ensure high standards. They will protect the integrity of the assessment. This is in line

with the regulatory objectives to protect and promote the public interest and the interests of consumers, and the better regulation principles of consistency and transparency. For example:

- They give clear guidance on what is required to pass the SQE. By limiting the number of attempts they avoid the risk, which has been shown to occur in other comparable exams, of candidates finally getting lucky and passing the exam when their competence to practise is in question
- They allow only failed candidates to resit. This will prevent those with more access to funds from being able to pay for additional resits simply to improve their score which would disadvantage candidates from poorer backgrounds.
- In line with the Principles for Qualified Lawyers, they do not permit exemptions from only part of FLK1, FLK2, or SQE2. This prevents candidates passing as a result of undertaking only a subsection of an exam. Pass marks derived from subsections are less reliable and less confidence can be placed in them as a basis for decision making. This is because they are based on fewer assessment points, so they will achieve lower levels of reliability and precision than the exam as a whole
- They require candidates to sign a fit to sit declaration before attempting the assessment. This restricts the extent to which candidates can decide to attempt the assessment, and then if they don't pass, rely on mitigating circumstances relating to illness or other personal circumstances to gain a further attempt. It is preferable for candidates to postpone an attempt if they are not well. This will help to maintain the standards of the assessment.
- They reference a comprehensive reasonable adjustments policy to ensure, as far as possible, that candidates with disabilities are not disadvantaged in sitting the SQE.
- They reference a clear two stage appeals process to ensure all candidates are treated fairly.
- They define malpractice in detail and make provision for its investigation and sanctions if it is proven, including reporting to the SRA.

222. We also include a requirement in the assessment regulations for candidates to sit SQE1 before SQE2 because candidates will require the underlying legal knowledge assessed at SQE1 in order to pass SQE2.

223. We considered carefully whether we should have a requirement for QWE to be completed before SQE2. We do not see a regulatory justification for this restriction. We know concerns have been expressed that not having this rule will lead to all candidates taking both SQE1 and 2 before QWE, and that the

consequential increased training costs will deter those from lower socio-economic backgrounds from qualifying. In fact, we know that different parts of the market are taking different approaches which suit their business models. Some firms are planning to introduce training covering SQE1 and 2 before QWE. But others are introducing an approach which integrates SQE1 and 2 with QWE. Provided standards are met at point of admission, we see no reason to restrict flexibility in how employers recruit and train their future solicitors. Allowing this flexibility can help encourage an independent, strong, diverse and effective legal profession.

224. In practice, if we required SQE2 to be taken after work experience, candidates would be in limbo at the end of QWE while they waited to take SQE2 and get their results. Alternatively, we could permit SQE2 to be taken at some point during QWE. But, in this case, we would need to specify an arbitrary minimum period of QWE before which SQE2 could not be attempted. It is not clear what the rationale would be for any such minimum period. But we will keep this under review once the SQE is implemented.

### Qualified lawyers

225. The Principles for Qualified Lawyers, which were also approved following the first application, enable us to be assured that the professional experience or qualifications of a qualified lawyer seeking admission in England and Wales provides them with the necessary skills, knowledge and competence for practice as a solicitor.
226. They outline our overarching requirements, our approach to exemptions and the recognition of professional qualifications and/or professional experience and language knowledge requirements for qualified lawyers seeking admission in England and Wales once the SQE Provisions are introduced.
227. In addition, our Authorisation of Individuals Regulations help us ensure that qualified lawyers seeking admission are competent by requiring that:
- “You will be eligible for admission as a solicitor if the SRA is satisfied:
- (a) you hold a legal professional qualification that is recognised by the SRA, which confers rights to practise in England and Wales or in an overseas jurisdiction.”
228. Regulation 6.2(b) of the Authorisation of Individuals Regulations says:
- “You will be eligible to apply for a practising certificate if “you have sufficient knowledge of written and spoken English or Welsh”
229. The effect of the current drafting of the Principles for Qualified Lawyers is that:
- we can only require lawyers who have been exempt from the whole of SQE2 to demonstrate that they meet our language requirement. This means that a lawyer who is **partially** exempt from SQE2 may not have demonstrated all four elements of language knowledge (listening, speaking, reading and writing)

in the part that they have sat. Therefore, we may be left with serious and concrete doubts about their knowledge of language

- in addition to making sure that a qualified lawyer seeking exemption from the SQE has a qualification recognised by us (as required by the Authorisation of Individuals Regulations), we would also need to make sure that they come from a jurisdiction that we recognise.
- Regulation 6.2(b) of the SRA Authorisation of Individuals Regulations provides that one of the eligibility requirements for a practising certificate is that the applicant has sufficient knowledge of written and spoken English **or** Welsh, depending on the language they use. The Principles currently suggest that a qualified lawyer can demonstrate that they meet the language requirement through the medium of English, but do not mention Welsh and could potentially prevent Welsh speaking qualified lawyers seeking a partial exemption from SQE to demonstrate their language knowledge in Welsh. This is therefore inconsistent with that Regulation.

230. We propose minor changes to the Principles for Qualified lawyers. We want to:

- remove the requirement for qualified lawyers seeking an exemption from the SQE to be from a jurisdiction we recognise
- make clear that qualified lawyers can demonstrate the language requirement in either English or Welsh in line with our Authorisation of Individuals regulations
- extend the language requirement to qualified lawyers who are exempt from parts of SQE2 (as well as the whole of it, as originally drafted) where we have serious and concrete doubts about their language knowledge
- remove the word “test” from the language requirement section.

231. We have consulted on these points. Our consultation response can be found [on our website](#). A summary of the consultation responses is set out in paragraphs 459-463 below.

232. We wish to be sure that qualified lawyers who want to be admitted as a solicitor in England and Wales have the professional experience or qualifications that provide them with the necessary skills, knowledge and competence for practice as a solicitor. Our view is that our proposed amendments to our Principles for Qualified Lawyers are justified in order to achieve this objective.

233. Our assessment of the qualification a qualified lawyer has obtained, together with their experience, rather than their jurisdiction, provides

assurances that they have met the standard we expect. Recognising the jurisdiction itself does not necessarily provide this assurance.

234. We will also amend the Principles for Qualified Lawyers to make clear that qualified lawyers can demonstrate their language knowledge in either English or Welsh when applying for their practising certificate.
235. This change makes sure that Welsh speaking candidates who wish to demonstrate their language competence in Welsh are not disadvantaged. Qualified lawyers will be entitled to practise across both England and Wales regardless of whether they demonstrated their language knowledge in English or Welsh.
236. Our objective is to make sure that all qualified lawyers meet the required standard of language knowledge we and the public expect, in order to protect consumers of legal services. We will therefore amend our Principles for Qualified Lawyers to extend the language requirement to qualified lawyers who are exempt from parts of the SQE2. Our approach will encourage the widest range of qualified lawyers to seek qualification whilst enabling us to maintain consistent high standards.
237. We want to be flexible in how a qualified lawyer can seek admission and to maintain our obligation to make sure that all solicitors have the required standard of English or Welsh language knowledge. We will also introduce flexible criteria to enable a qualified lawyer to do this, which helps support the diversity of the profession.
238. We will remove the word “test” from the language requirement section of our principles. We consider that it is confusing and unnecessary, because it implies that an exam style test is required. This is not the case. Use of the word “test” does not reflect the flexibility in how a qualified lawyer can demonstrate their language knowledge if required.

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## Section E – How do our changes relate to the Regulatory Objectives?

239. This section assesses whether our changes will promote, be neutral or detrimental to each of the Regulatory Objectives in [section one](#) of the Legal Services Act (“LSA”).

### Protecting and promoting the public interest

240. We need to make sure that all legal services are delivered competently. This means that consumers are protected by safe, ethical and effective legal advice and services, and the public can have confidence in the legal sector.
241. The SQE will provide better assurance of this competence than under the current system. The SQE assessments have been designed with this objective in mind. The SQE will use modern psychometric methods to assess all intending solicitors on a consistent basis. It will give assurance that all intending solicitors are competent to deliver the legal services that consumers need. Our decision to require all candidates to take the same assessments in SQE2 supports this aim because we can demonstrate that all candidates have been assessed to the same robust standards, across all of the areas required to gain full practice rights as a solicitor. This will not only help create a more effective and diverse profession, but by ensuring competence across the full range of areas of practice rights, will support wider access to justice for consumers of legal services.
242. Solicitors also serve wider functions in society. For example, they can become judges or advocates. They support the economy through contract negotiation. They help people to participate in society and enforce their legal rights. It is important, therefore, that the public can have confidence that anyone given the title of solicitor has met an appropriate standard. That confidence will, we believe, lead to more uptake of solicitors’ services by consumers who need them.
243. Our amendments to the Principles for Qualified Lawyers will make sure that all lawyers have demonstrated the appropriate competence, including language skills, before admission as a solicitor.

### Supporting the constitutional principle of the rule of law

244. Solicitors play a critical role in the justice system. They are officers of the court. Lawyers involved in the administration of justice must be competent to play their part. The SQE will assure this competence through rigorous, consistent assessment, using modern psychometric methods. It will also make sure that all candidates are assessed in professional and ethical standards, better ensuring adherence to the professional principles.

## Improving access to justice

245. Our current regulation of prescribed training and pathways to qualification is a significant intervention in the market. How training is regulated can create inadvertent barriers. The SQE targets our intervention in the market on assuring competence at the point of qualification rather than on regulating pathways; and on the provision of data to help candidates choose and drive up standards of training.
246. As we explained in our first application, there will be no artificial restrictions on the supply of qualified solicitors, in line with your statutory guidance on education and training<sup>50</sup>. So the SQE will encourage the supply of competent qualified solicitors to meet the needs of the consumer market.
247. We hope that more choice about how to qualify as a solicitor and the flexibility of QWE will encourage a more diverse profession. This could have a positive impact on the availability of a diverse range of services and improve access to justice amongst consumers from diverse backgrounds who want to use solicitors more like themselves and who understand their communities. And as mentioned above, greater consumer confidence may lead to greater uptake of legal services provided by solicitors, by consumers who need access to justice.

## Protecting and promoting the interests of consumers

248. Consumers need to be confident that the legal services they use are provided to a competent standard.
249. The SQE assessments will both ensure our competence standards are met and give consumers greater confidence. As stated above in paragraph 34, four out of five consumers believe that all solicitors should have to pass the same final examination. In removing artificial barriers, the SQE may also enable more people from diverse and non-traditional backgrounds to qualify, supporting a diverse profession and increasing access to justice for all communities. It may also increase the overall numbers joining the professions, which again, may increase access to legal services. It is in the consumer interest for people to be able to access a range and choice of legal services when they need them.
250. The SQE will be supported by other SRA initiatives that will empower consumers, drive competition and therefore improve quality of legal services. For example, under our new Standards and Regulations, solicitors have the opportunity to work in different ways which will drive competition. This also includes our work to improve consumer choice through the provision of better information, such as on price, services.
251. The SQE will assure competence through rigorous, consistent assessment, using modern psychometric methods.

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<sup>50</sup> Outcome 5: Regulators place no inappropriate direct or indirect restrictions on the numbers entering the profession.

252. Our amendments to the Principles for Qualified Lawyers will make sure that all lawyers have demonstrated the appropriate competence, including language skills, before admission as a solicitor.

### **Promoting competition in the provision of legal services**

253. As stated above, the SQE will help remove artificial restrictions on the supply of qualified solicitors. It will help to remove hurdles such as the financial burden of the LPC and the 'gamble' of obtaining a training contract after paying for the LPC. By removing these barriers, we help to enable a more diverse range of people to qualify as solicitors. This could give consumers more diversity in their choice of solicitor. Giving consumers more choice will promote competition and encourage other legal services providers to look at ways to compete.

### **Encouraging an independent, strong, diverse and effective legal profession**

254. As can be seen in this application, this objective is marbled throughout our proposals for change and the positive impacts we expect to see as a result. It underpins both of the key aims of our proposals.
255. The SQE provides a standardised assessment, using modern assessment methods, which will ensure consistent, high standards of competence. These high standards will underpin the strength and effectiveness of the solicitors' profession.
256. The SQE will be a robust assessment. It will promote high standards. This should assure solicitors' standing both at home and abroad. This in turn should maintain the strong standing of the profession.
257. The SQE will require anyone qualifying as a solicitor to properly understand their professional obligations, including the requirement to be independent.
258. Qualification will depend on a consistent standard of competence rather than on who secures a training contract. Our proposals will widen the opportunity for candidates to get the necessary work experience needed to qualify as a solicitor. And making qualification independent of the providers of workplace training who currently sign off trainees could foster a more diverse profession, because everyone will have the opportunity to show that they have met the same consistent standard.
259. Unjustified barriers to qualification, such as high cost and overly rigid pathways, will be reduced or removed. Competition amongst training providers should encourage a more effective training market. We are already seeing significant investment and innovation in professional legal education (see paragraph 353 and annex 8). The market will be as open as it can, while at the same time still securing high and consistent standards. This will allow more varied pathways which encourage a greater diversity of candidates to qualify as solicitors. The SQE also provides market credibility

for new routes to qualification as a solicitor, such as through an apprenticeship.

260. Further points relating to a more diverse and inclusive profession, and to the impact on costs to candidates, are set out in paragraphs 380-451 and annex 4.

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

261. The SQE is not directed at this objective but if the standards of solicitor competence are robust, and more consumers have access to justice, then together this should have a positive impact on citizens' understanding of their legal rights. And part of that understanding is that they can place confidence in the competence of regulated solicitors who have all met the same standard at point of entry into the profession.

### Promoting and maintaining adherence to the professional principles

262. The professional principles in the LSA section 1(3) include:

- (a) that authorised persons should act with independence and integrity,
- (b) that authorised persons should maintain proper standards of work,
- (c) that authorised persons should act in the best interests of their clients,
- (d) that persons who exercise before any court a right of audience, or conduct litigation in relation to proceedings in any court, by virtue of being authorised persons should comply with their duty to the court to act with independence in the interests of justice, and
- (e) that the affairs of clients should be kept confidential.

All of these principles will be assessed in the SQE.

263. The Statement of Solicitor Competence comprises all the elements needed for practice as a solicitor which together add up to professionalism. The Statement of Solicitor Competence is mapped onto the SQE. The SQE will include mandatory assessment of professional ethics in both SQE1 and SQE2. Ethical issues will pervade all parts of the SQE, so candidates will have to demonstrate the ability to spot an ethical issue and to address it appropriately.

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## Section F – How do our changes relate to the Better Regulation Principles?

264. This section assesses how we consider our proposed changes fulfil our [obligation](#) to have regard to the Better Regulation Principles.

### Proportionality

265. As accepted in the decision in relation to our first application, a compulsory centralised assessment for all aspiring solicitors is a proportionate response to the consumer detriment that can occur if a solicitor is incompetent and if we cannot be certain that standards are consistent in the current system.
266. We have taken care with the design of the assessment to make sure that it is proportionate to achieving our core objectives. It will focus only on the core knowledge and skills that solicitors need to practise effectively (informed by stakeholder views) and the reserved activities that solicitors are entitled to practise on admission. This will ensure that all solicitors have achieved the minimum standard of competence required to practise safely. A further benefit of this approach is that candidates will not incur costs associated with unnecessary training and assessment. Overall, the proportionate nature of the SQE assessments will influence providers' training offerings and encourage competition among providers, all of which should help to minimise the cost of qualification.
267. Our approach to the recognition of qualified lawyers is also a proportionate way to assure standards whilst avoiding unnecessary regulatory requirements. We will not require qualified lawyers to take the SQE if the knowledge and skills they have already had assessed in their own jurisdiction is not substantially different to those tested in the SQE. But if we exempt them from parts of the SQE, we will require them to demonstrate their competence in English or Welsh language.

### Accountability

268. We will be directly accountable for the SQE. We are also accountable to others including the LSB. (See our [accountability statement](#).) We will be in a strong position to take direct action if problems are identified with the SQE.
269. We will also be accountable for checking, monitoring, understanding and reporting on performance by protected groups on the SQE.
270. We will collect and publish data showing how different training providers perform in the SQE. This will enable those providers to be held to account for the quality of the education they offer. (See paragraphs 165-170.)
271. In the current system, responsibility for entry to the profession is delegated to education and training providers with no guarantee of consistent

standards. We have no right to intervene to prevent a university passing a student who we believe has not met minimum standards. In any event, accountability for the qualification of an individual as a solicitor is hard to pin down.

272. In the future, we will be both accountable and responsible for assessing standards of competence at point of admission. This is appropriate because we act in the public interest and are accountable to the public for the standards of the profession.

## Consistency

273. The SQE will provide the public and the profession with the consistent assurance of competence that does not currently exist, in line with our objectives. We will require all candidates, regardless of how or where they have trained, to take the same, uniform assessment. They will be assessed against a consistent threshold standard. This consistency will ensure that stakeholders can have confidence in those who qualify as a solicitor. At present there is no consistent examination at the point of qualification for solicitors and no mechanism to compare the different pathways.

## Transparency

274. The transparency of both standards and assessment is a key element of the SQE. The Statement of Solicitor Competence, and associated Statement of Legal Knowledge and Threshold Standard, will ensure that the standards of competence that solicitors should meet are transparent. The SQE assessment specifications make it clear how candidates are assessed against those standards.
275. We will provide data on the SQE which will make the qualification system more transparent. This will include performance data after each assessment. And pass rates by providers and law firms will help students choose good quality training. Our resources will also help students navigate the wider choices available to them.
276. In contrast, in the current system there it is difficult to benchmark standards across different providers and the different players responsible for making the decisions about who should qualify.
277. The Bridge Group Report (annex 9) recommended that we have in place a robust data and information strategy to realise the benefits of greater transparency afforded by a standardised examination. This will make sure that the examination is accessible to all aspiring solicitors. We will provide resources and supporting information. We will also publish pass rates for providers of preparatory training to improve transparency and inform candidates' choices about whether they wish to undertake training and, if so, how and with whom.
278. We will follow the same approach to evaluation that we have taken with the introduction of our new Standards and Regulations. It will involve the

development of a logic model for evaluating the impact of the SQE which will provide a base for the evaluation to progress through phases.

279. In addition to the evaluation exercise, we will also have in place a framework for reviewing and assuring the quality of the SQE assessments as set out in paragraph 284. And to promote confidence in the SQE, we have appointed an Independent Reviewer who will provide an annual report on the assessment providers' delivery of the assessments as well as our standard setting processes. This report will be published.

## Targeted

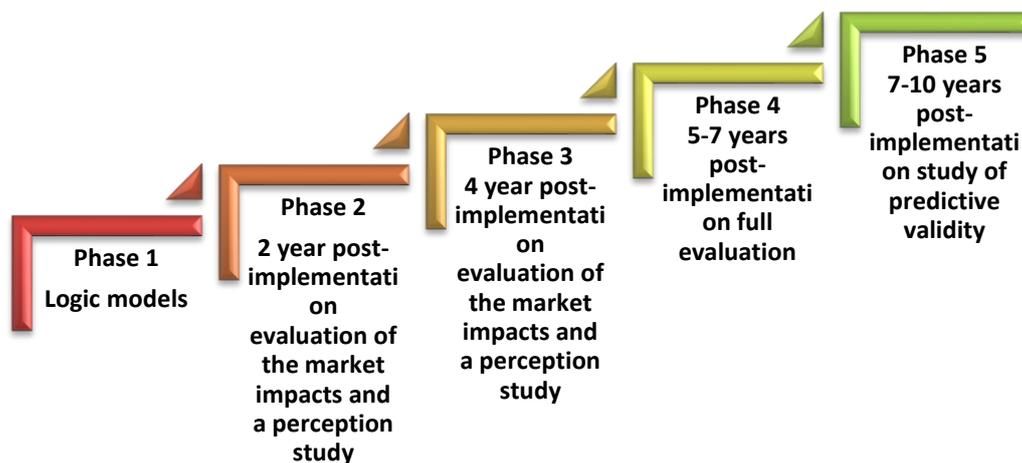
280. Our role is to protect the public and consumers of legal services. One of the key ways to do that is through our requirements for entry to the profession. The SQE is a highly efficient way to target consumer protection: we have identified the competences required for practice as a solicitor in the Statement of Solicitor Competence and the SQE is aligned around them.
281. The current system is focused on education and training pathways – that is, inputs to the qualification process. But our concern as a regulator should be on the delivery of competent legal services; namely, the outputs that the process should produce. By assessing competence against consistent standards and permitting flexible pathways, we will direct our regulatory intervention to the correct point – the competence of qualifying solicitors.
282. The current system is based on the specification of required training. This is a disproportionate regulatory intervention in the training market. We will no longer focus resources on 'policing' these input measures which do not ensure standards and which constrain flexibility. Instead we will focus our resources on setting and assuring standards through the SQE in a targeted way.

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## Section G – How will we evaluate our desired outcomes?

283. We said in our first application that we intend to evaluate the impact of the SQE against the following desired outcomes:
- greater assurance of consistent and comparable high quality standards at the point of admission
  - the development of new and diverse pathways to qualification, which are responsive to the changing legal services market and remove artificial and unjustifiable barriers.
284. As the Bridge Group pointed out in its 2017 and 2020 reports, we will not be able to fully assess the impact of the SQE until it is implemented and we have collected data from the assessments over a number of years. This is the case for all examinations and assessments.
285. But we will have in place mechanisms for the ongoing, routine quality assurance and evaluation of the SQE from its introduction. This will include:
- reviewing and reporting on the operation of the SQE assessments on an ongoing basis through the measures set out in our quality assurance framework. And to promote confidence in the SQE, we have appointed an Independent Reviewer who will provide an annual report on the assessment providers' delivery of the assessments as well as our standard setting processes. This report will be published.
  - collecting, interrogating and publishing data on performance in SQE assessments, including performance by protected characteristics and socio-economic background, after each assessment. This will enable us to identify and investigate any specific trends or concerns. See paragraphs 166-171.
  - putting in place and publishing a long-term plan for full evaluation of the impacts of the new qualification framework.
286. In this section, we focus on the long-term plan for evaluation of the impact of the introduction of the new qualification framework as our other mechanisms for ongoing evaluation are covered elsewhere in the application. See paragraph 184.
287. We will put in place the framework for evaluating the SQE towards the end of 2020, so that we can be sure that we are collecting the right data to inform the evaluation once SQE is implemented. We have already asked providers to give us additional data on LPC performance, such as candidates' socio-economic data, to support our evaluation of the SQE. We have also reviewed the data that we collect on gender identity and disability. LPC providers will submit this to us for the first time in December 2020.

288. We will follow the same approach to evaluation that we have taken with the introduction of our new Standards and Regulations. As we explained when we submitted our application for approval of the Standards and Regulations, we published an impact evaluation framework, developed by the Centre for Strategy and Evaluation Services (CSES) for our regulatory reform programme in June 2017. The overarching rationale for developing this impact evaluation framework was to enable us to apply a standardised and systematic approach to, and methodology for, assessing the impacts of our reforms and initiatives. CSES suggested that, whilst the initial framework focused on the [Looking to the Future reforms](#), the overall approach of the framework could be customised and used in the evaluation of other reforms and initiatives. This would serve to increase the consistency and comparability of different evaluations.
289. We propose, therefore, to follow a similar approach to evaluation of the SQE. As with our evaluation of the Standards and Regulations, our evaluation of SQE will consider consumer, economic, market, equality and diversity impacts. It will involve the development of a logic model for evaluating the impact of the SQE which will provide a base for the evaluation to progress through phases.
290. We will commission independent experts to identify the metrics we will use to measure actual outcomes on different groups in the legal services and training markets and to help us to assess the impact over the short, medium and long-term.



291. The purpose of the impact evaluation framework is to:

- understand the market, legislative and other factors that might influence the effectiveness and impact on key groups including people considering a career in law, SQE candidates, newly qualified solicitors, employers/firms (particularly those involved in recruitment and training), education and training providers and the public

- compare actual impacts against potential/predicted impacts, and to compare actual impacts against a counterfactual or baseline position
    - identify the main indicators that we can use to monitor and measure impact, post-implementation
    - to provide a structured approach to identifying, collating and analysing qualitative and quantitative evidence of impact where necessary.
292. This will be a long-term commitment to evaluation which will last over ten years. Although we cannot evaluate the full impact of the SQE until five to seven years after its introduction, we will undertake an initial, interim evaluation after two years. This initial evaluation will include a study of developments in the training market and a perception study amongst key stakeholders, in line with the recommendations from Bridge Group.
293. The interim market evaluation is likely to examine:
- the type and cost of preparatory training for the SQE
  - the overall cost of qualification (the cost of preparatory training and the cost of the assessment)
  - examples of innovative education and training provision aligned to the new qualification
  - how Qualifying Work Experience is operating in practice
  - overall, whether the SQE has resulted in the removal of unnecessary barriers and the introduction of more flexible routes of training and entry into the profession
294. The interim perception study is likely to investigate a range of stakeholders' views and perceptions of the SQE. It will include candidates, students, newly qualified solicitors, employers (those involved in recruitment and training), education and training providers, the general public. It will measure:
- the level of confidence people have in the SQE to ensure candidates are competent to practise as a solicitor
  - how much people trust the SQE to be fair; ranging from trust in the reliability of the outcome to the fairness of reasonable adjustments for candidates with disabilities.
  - different stakeholder groups' understanding of the SQE and whether particular groups need more information on specific aspects of the SQE and its administration.
295. As we said in our first application, we will carry out a full evaluation, five to seven years after the introduction of the SQE. This evaluation will build on and add to the interim evaluations. They will include:

- a perception study – repeated bi-annually thereafter. This will measure stakeholders' longer-term views of confidence, trust and understanding of the SQE
- further investigation into the type and cost of preparatory training for the SQE
- an investigation into the impact of training routes on career progression
- further investigation into the overall cost of qualification (the cost of preparatory training and the cost of the assessment)
- an investigation into the impact of the SQE on the ethnic profile and socio-economic background of the profession.
- any unintended impacts or consequences flowing from the introduction of the SQE.

Seven to ten years after the introduction of the SQE we will undertake a study into its predictive validity. Predictive validity refers to whether the scores on the SQE can predict the future competence of a solicitor or their progression in the profession.

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## Section H – Who have we spoken to about our proposed changes?

296. In this section we set out:
- the issues on which we have proactively engaged with stakeholders
  - the key issues and concerns which stakeholders have raised with us.
297. We explain how we have addressed these issues and our response. Not all of these issues relate directly to the substance of this application but they will provide useful context. As we have explained in paragraph 18 above, some of them cover issues which were addressed and considered by you in our first application and are no longer outstanding.
298. When we announced our intention to go ahead with the SQE, we committed to working collaboratively with stakeholders to develop the detail of the SQE. Since our first application, we have undertaken an extensive programme of engagement. We have engaged with many different groups in a variety of formal and informal ways and on a wide range of issues.
299. Since 2018, we have had more than 26,000 interactions with interested parties through more than 200 meetings, events and webinars, plus more than 1,200 responses to 14 surveys. This is in addition to:
- 370,000+ visits to our SQE-related web pages
  - More than 22,000 engagements and 1.7m impressions on social media
  - 1,750+ members of SQE LinkedIn group
  - 2,300+ followers of our Career in Law Facebook targeted at aspiring solicitors
  - 1,300+ subscribers to our monthly SQE bulletin since launched in January
  - 365+ pieces of media coverage.
300. Solicitors have been closely involved with the design and development of the SQE:
- the question writers, markers and assessors are all qualified solicitors
  - Kaplan's academic team are all qualified solicitors

- we convened an expert group of solicitors to discuss our approach to the assessment of legal research skills
- we convened an expert group of solicitors to advise on the content of the Statement of Functioning Legal Knowledge
- our SQE Reference Group includes legal academics and solicitor representatives

## SQE Assessment Regulations

### What did we engage on?

301. We first published the assessment rules together with our rationale for them in our second consultation in 2016. We also included them in the July 2017 published version of the SQE Assessment Specification. The assessment rules have not changed since 2017. But they are now included in the SQE Assessment Regulations managed by Kaplan. We have also recently sought feedback from the SQE Reference Group on the assessment rules.

### What did people tell us?

302. We had limited comments on the assessment rules in response to the 2016 consultation. The Law Society and a number of other stakeholders welcomed the proposal to limit the time taken to pass the SQE to six years. The Law Society also welcomed the proposal to limit the number of resits to three. A small number of other stakeholders also agreed that candidates should not be able to re-sit in order to improve their marks and that all assessments should be taken in one sitting. Two stakeholders queried whether six years would be long enough for some candidates, including those who work and study part-time and apprentices.
303. The SQE Reference Group recently indicated that they were broadly content with the assessment requirements. Some members of the group:
- queried whether we should allow candidates to apply for additional time to complete the SQE assessments (ie longer than six years) if they had to take time out, for example, because of illness or caring responsibilities
  - suggested we should allow candidates six years from completion of SQE1 rather than from the first time they take SQE1
  - suggested minor drafting changes to the rule which requires candidates to take all assessments in one sitting.

### How did we respond?

304. We have amended the drafting of the assessment rules to make it clearer what we mean when we require candidates to take all assessments in one

sitting. We have also amended them to include a provision to allow candidates to apply for an extension to the six-year period in exceptional circumstances.

## SQE1 Assessment Specification

### What did we engage on?

305. We published our first draft of the SQE Assessment Specification in October 2016 alongside our second consultation. We received limited feedback in response to the consultation but we made some minor amendments and published a revised draft in July 2017.
306. The purpose of the assessment specification is to tell candidates and training providers about the content and structure of the SQE assessments. The assessment specification sets out our proposed approach to the assessment, an overview of the SQE assessments, assessment objectives and how the assessments relate to the Statement of Solicitor Competence.
307. One of Kaplan's first tasks was to review the content and structure of the Assessment Specification. For the purposes of the pilot, we separated out the SQE1 and SQE2 Assessment Specifications.
308. We asked the SQE Reference Group for views on options for the structure of the assessment objectives for SQE1. We also sought wider views on the assessment objectives via a survey posted to our LinkedIn group.
309. Further views were also sought from the Reference Group and members of the LinkedIn group on all aspects of the SQE1 Assessment Specification including its detail, format and structure. And we asked pilot candidates for feedback on how useful they found the SQE1 pilot Assessment Specification.
310. As stated, we also reviewed the Statement of Functioning Legal Knowledge through feedback from:
  - academic and training providers at our December 2018 Conference (attended by 97 providers)
  - the SQE Reference Group
  - Kaplan's subject matter expert question writers
  - a survey posted on our SQE LinkedIn group (which received 161 responses).

### What did people tell us?

311. Views on the suggested assessment objectives were mixed, with some stakeholders preferring more generic assessment objectives and others preferring more detailed assessment objectives along the lines of those in the draft 2017 assessment specification.

312. Of the candidates that answered the relevant questions of the post SQE1 pilot candidate survey, 86% agreed or strongly agreed or were neutral that the assessment specification was helpful in telling them what would be assessed (61.8% agreed or strongly agreed, 24.2% were neutral). 78.3% agreed or strongly agreed or were neutral that the assessment specification was helpful in giving them information about the format of the questions (62.2% agreed or strongly agreed, 16.1% were neutral). 52.3% agreed or strongly agreed or were neutral that the assessment specification was helpful in indicating the level of difficulty of the examinations (17.6% agreed or strongly agreed, 34.7% were neutral). This was the lowest scoring question in the survey.
313. Suggestions for improvement included:
- calls for a clearer indication of how the topics would be tested and the kind of questions that would be asked should be provided
  - requests for more detail/breakdown of the description of topics to be assessed, rather than by broad headings.
  - more information on what topics would be examined on each day.
  - clearer presentation of the information in the assessment specification.

### How did we respond?

314. We convened drafting groups made up of subject matter experts and made a number of technical amendments to the Statement of Functioning Legal Knowledge in light of the feedback from stakeholders. Examples are set out in paragraph 312 above.
315. In response to concerns that the assessment specification did not adequately explain the level of difficulty of the assessment and in response to calls for more information about the type of questions that would be asked, we have published a set of 90 sample FLK questions.
316. We revised the assessment objectives to make them more generic.
317. We also simplified the structure and language to make the assessment specification more accessible.

### Assessing skills in SQE1

318. Full details of how we engaged and our response on this question is set out in paragraphs 95-105.

## Taking the SQE in Welsh

### What did we engage on?

319. England and Wales is a bilingual jurisdiction, and access to legal services in consumers' language of choice is something we want to support. We have done extensive work to explore whether it is possible to deliver the SQE in Welsh.
320. We have held meetings with the Welsh Government, the Coleg Cymraeg Cenedlaethol<sup>51</sup> and the WJEC<sup>52</sup>. We have met the Welsh Justice Commissioner, Welsh Language Commissioner, the Welsh Counsel General and Welsh Government officials.
321. We have written to all six Welsh universities who teach law degrees and/or the LPC to ask about their Welsh language provision. We have met Welsh-speaking staff and students at the University of Swansea. We have also spoken to the Translation Service at HM Courts and Tribunals Service in Caernarfon and to the Translation Unit at the Centre for Welsh Language Services at the University of Bangor.
322. We have written to all Welsh-speaking solicitors to ask whether they would be interested in being appointed as bilingual SQE2 assessors. 97 have told us that they would be interested, and they cover the full range of practice areas.

### What did people tell us?

323. The delivery of services in Welsh is one of the Welsh Government's key priorities. Its strategy – Cymraeg 2050 – aims to achieve one million Welsh language speakers in Wales by 2050, by promoting and facilitating the use of the Welsh language.
324. The Welsh Justice Commission published its report Justice in Wales for the People of Wales at the end of October. It recommended that: "Professional legal education for those wishing to practise in Wales must be available in the Welsh language with the phased introduction of the availability of all professional examinations in Welsh".
325. The Welsh stakeholders we spoke to were all very clear that they would wish to see full parity of approach between English and Welsh on the SQE. Pragmatically, they were prepared to accept a phased introduction (in line with the recommendations of the Welsh Justice Commission), but only on the basis of a clear timetable leading to full parity.

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<sup>51</sup> The Coleg was established by the Welsh Government to work with universities in Wales in order to develop Welsh language courses and resources for students.

<sup>52</sup> The GCSE and A level examination board in Wales.

326. We expect that numbers of candidates attempting SQE in Welsh will be small. The Welsh Justice Commission estimated that there were about 100 students who were taught at least some part of their law degree in Welsh each year. Nationally, only about 25% of law students qualify as solicitors. In addition there will be non-law graduates and Welsh-speaking students taking law at English universities. So we estimate numbers to be about 50 students each year, once the transitional introduction of the SQE is complete, or largely complete. We expect numbers before then to be significantly lower.

### **How did we respond?**

327. In the light of what we have heard, we consider that we should implement a phased approach to the implementation of SQE in Welsh. From autumn 2021 when the SQE is introduced, candidates will be able to provide responses to SQE2 written assessments in Welsh. This is an enhancement on current LPC provision. The approach avoids translation costs and therefore keeps costs low at a time when we expect candidate numbers to be low.
328. In the second year of SQE, candidates will provide their responses to SQE2 oral and written assessments in Welsh. This means that Welsh provision will be extended to all SQE2 assessments.
329. In the third year of SQE, questions for oral and written skills from the assessments will be translated into Welsh. And from the fourth year of SQE the FLK questions will be translated into Welsh. We have discussed our proposed approach with stakeholders in Wales. Counsel General Jeremy Miles MS told the Welsh Parliament that he was “very pleased to see that the Solicitors Regulation Authority have committed now to make the solicitors qualifying examination qualification available in Welsh”.<sup>53</sup>

## **SQE2 design**

330. Full details of how we engaged and our response on this issue are set out in paragraphs 145-164.

## **SQE2 Assessment Specification**

### **What did we engage on?**

331. We first published an assessment specification for SQE2 as part of the October 2016 consultation. It was reviewed and updated by Kaplan prior to the SQE2 pilot. The SQE2 Assessment Specification for the pilot reflected the assessment design used for the pilot. As stated, design enabled us to evaluate three different models of SQE provision, one of which was subsequently adopted. We sought feedback from the SQE Reference Group

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<sup>53</sup> Plenary Questions to the Welsh Parliament, 1 July 2020

on the pilot assessment specification. We also published a survey seeking comments from stakeholders.

332. We published a draft, final SQE2 Assessment Specification and undertook targeted engagement with stakeholders, including through an online survey and the SQE Reference Group.

### What did people tell us?

333. We received limited feedback on the draft assessment specification as part of the 2016 consultation.
334. We received 117 responses to the September 2019 survey about the SQE2 Pilot Assessment Specification. The feedback from the survey was overwhelmingly positive. High percentages of respondents agreed that:
- it was clear what candidates had to do in each task
  - the assessment criteria were clear for each assessment objective
  - the split between law and skills should be 50/50
  - all assessments should be equally weighted.
335. A small number of respondents said that they would prefer more detailed assessment criteria.
336. Of those candidates that used the SQE2 Pilot Assessment Specification and answered the relevant question:
- 80.3% agreed or strongly agreed or were neutral that the assessment specification was helpful in telling them what would be assessed (65% agreed or strongly agreed, 15.3% were neutral).
  - 77.9% agreed or strongly agreed or were neutral that the assessment specification was helpful in giving them information about the format of the questions (59.5% agreed or strongly agreed, 18.4% were neutral).
  - 55.2% agreed or strongly agreed or were neutral that the assessment specification was helpful in indicating the level of difficulty of the examinations (19.9% agreed or strongly agreed, 35.3% were neutral).
337. We received 49 responses to our June 2020 survey on the final SQE2 Assessment Specification. 29 full responses and 20 partial responses.
- 83.7% of respondents agreed that what would be assessed is clear, very clear or were neutral (49% clear, 4.1% very clear and 30.6% neutral)

- 81.4% of respondents agreed that the way it is going to be assessed is clear, very clear or were neutral (43.8% clear, 6.3% very clear and 31.3% neutral)
- 59% of respondents said that the spread and content of the assessments was appropriate to test the skills necessary for qualification. This was a yes/no question.

338. Key points raised by stakeholders were:

- some stakeholders called for more detail on the legal knowledge that will be tested in SQE2. In particular, they asked for examples
- some stakeholders asked for more clarity on what materials candidates will be given. Again, they asked for examples
- some stakeholders queried why the interviewing and attendance note exercise will not be taken in business law
- some stakeholders suggest that the legal research task is unrealistic
- some respondents did not understand how the skill of negotiation will be assessed.

### How did we respond?

339. We have amended the SQE2 Assessment Specification to provide more detail about how negotiation skills will be assessed. We will publish sample SQE2 questions in autumn 2020. We believe that this will provide the clarity that stakeholders have requested on the testing of legal knowledge in SQE2 and the provision of materials to candidates.

340. Kaplan explored a range of options for assessing legal research skills. They convened an expert stakeholder group to consider this question. They considered whether it would be possible to develop an assessment which would enable candidates to search online reference material. But they concluded that this would not be possible because the legal databases were not robust enough for a high stakes assessment with large numbers of candidates. In addition reliance on online legal databases disadvantaged those from poorer backgrounds without access to these databases either at work or through their education provider. The proposed legal research assessment assesses the key elements of this skill, within the constraints of a large-scale high stakes assessment which is delivered internationally. Candidates will be provided with a range of legal materials (relevant and irrelevant) and will be required to identify the relevant principles from them to apply to a practical scenario.

## Calls for more detail

### What are stakeholders' concerns?

341. Stakeholders, particularly education and training providers, have called for more detail on the SQE assessments to help them prepare their SQE preparatory training.

### How did we respond?

342. We have engaged extensively with education and training providers during the design and development of the SQE assessments. We have held one to one meetings, held conferences for education and training providers, included representatives on our SQE Reference Group and sought feedback on the design of the assessments and the assessment specifications through surveys and our LinkedIn group. We have also run a webinar on the final SQE1 Assessment Specification.
343. We have published the final SQE1 and SQE2 Assessment Specifications. We have published sample questions for SQE1. Sample questions for SQE2 will be published in the autumn.
344. We have established a mechanism for stakeholders to ask questions about the assessments and the SQE1 and SQE2 assessment specifications. And we plan to set up an ongoing community of interest for providers.
345. We also delayed implementation of the SQE from 2020 to 2021 to give stakeholders time to prepare. We are submitting this application for approval as early as possible after our Board's decision and further engagement with stakeholders on the final design so that we can give stakeholders certainty that the SQE will go ahead as soon as we can.

## The cost of the SQE

### What are stakeholders' concerns?

346. Stakeholders, including the Law Society and the Junior Lawyers Division, continue to express concern that the new system will not reduce the costs of qualifying. This would perpetuate some of the problems with the current system faced by those from less affluent backgrounds.
347. Part of this is because stakeholders are concerned that SQE preparatory training, which is not included as part of an undergraduate or master's degree, plus the cost of the SQE assessment itself, are not currently eligible for government-backed student loans or for Disabled Students Allowances. There is also a risk that no longer specifying the length of SQE preparatory training could advantage those most able to afford the highest quality

training in the shortest time – which could come at a greater cost, disadvantaging less affluent students.

### What is our response?

348. We have published the final costs for the SQE assessments. This is within our original cost window.
349. We have contractual mechanisms with Kaplan to make sure that there is financial transparency for the delivery of the SQE assessments. Candidate fees will be agreed with us in advance and must represent value for money.
350. The candidate fee for the SQE will be £3,980 for SQE1 and SQE2:
- SQE1: £1,558
  - SQE2: £2,422
351. The indicative cost is comparable with other professional assessments, on time per test basis<sup>54</sup>.
352. Candidates will not have to pay VAT on assessment fees.
353. The cost of any training will be additional and is discretionary. We anticipate there will be a wide range of training models, and price points, including:
- SQE-inclusive law degrees
  - apprenticeships funded through the apprenticeship levy and which allow people to earn a salary while training. This can include individuals with prior learning joining the apprenticeship programme for the last two years of their training, in which case the cost of their training and assessment (on a pro rata basis) is recoverable through the apprenticeship levy
  - bespoke SQE-focused training courses for law and non-law graduates
  - new post-graduate professional law programmes which may include the current GDL content within an SQE training package.
354. The training market has already invested significantly in the SQE. It is already developing in response to the approval of the SQE Provisions following the first application.
- 35 organisations have so far joined the SQE list of training providers on our website.

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<sup>54</sup> When compared with similar assessments for GPs and overseas dentists wishing to qualify in this jurisdiction.

- There are already new entrants offering SQE training. For example, education and training provider Barbri is advertising SQE preparatory courses that include a full-time (10-week) or part-time (24-week) SQE1 preparatory course for law graduates and a full-time (8-week) or part-time (16-week) SQE2 preparatory course. They have indicated that the cost of the two preparatory courses may be in the region of £7,000 for both together.
      - Traditional universities are looking at their law degrees to consider if and how to prepare their graduates for SQE. So far, we are aware of 15 universities that are making plans to introduce SQE1 prep-inclusive law degrees and four that are planning to offer additional, optional top-up modules. Ten other universities have told us that they are considering whether to offer SQE1 training. Five universities have confirmed that they will offer SQE2 training.
      - Two private providers have confirmed that they plan to offer SQE1 training and five have confirmed that they plan to offer SQE2 training. 20 other private providers are considering offering SQE1 training and 23 are considering offering SQE2 training.
      - Seven providers are planning to launch their SQE integrated degrees in 2021 - six LL.Bs and one LL.M. The LL.Bs will be a third-year variation on the traditional degree. Two providers are planning to launch their SQE integrated LL.B in 2022, with students then able to take SQE1 in 2023.
      - Firms are introducing new training programmes. These include, for example, three-year training programmes which incorporate QWE with preparation for SQE1 and SQE2
      - Publishers have advanced preparations in hand to launch textbooks and suites of multiple-choice questions
355. Some of these options will be materially cheaper than the current route to admission. Where a candidate trains through a combination of a law degree integrating SQE1 preparation, there would be no additional training cost for SQE1.
356. However, we are also aware that early indications suggest that not all universities wish to incorporate SQE preparation into their law degree. So candidates may still want SQE preparatory training for SQE1, even after completing a law degree at university, particularly in the early years as the market continues to develop. And candidates may need some classroom or online training in addition to their QWE before taking SQE2. Early indications suggest that SQE1 and 2 preparatory courses will be substantially shorter than the LPC.
357. Where a candidate requires SQE training over and above a law degree and their QWE, early market indications such as the Barbri course suggest that

training costs could be substantially lower than the LPC, in the region of £7,000<sup>55</sup> rather than up to £16,750 for the LPC and approximately £1,500 for the PSC.

358. The structure of the SQE also helps address the “LPC gamble” ie where candidates may have to pay upfront for the LPC before they have secured a training contract. SQE1 is a much cheaper initial pre-work-based-learning assessment than the LPC. So when the SQE is introduced, the risk to candidates is £1,558 (plus any training costs they incur). That is helpful to people seeking to enter the profession, particularly candidates from less affluent backgrounds.
359. It is correct that student loan funding and Disabled Students Allowances are not currently available for the cost of the SQE assessment itself, or for the cost of private courses that a candidate may choose to take. However, there is government funding for degree courses which incorporate SQE training. There is also funding for SQE costs through the solicitor apprenticeship. This can include individuals with prior learning joining the apprenticeship programme for the last years of their training, in which case the cost of their training and assessment (on a pro rata basis) is recoverable through the apprenticeship levy.
360. The upfront cost, as set out above, is very significantly lower and the SQE offers real flexibility (eg online training or integrated approaches combining classroom and workplace learning), providing more scope for “earning while you learn”. We have discussed the funding issue with the Law Society and together we will continue to ask Government to consider this point.
361. We know from talking to law firms, that some employers are considering paying SQE costs for employees, as they currently do (for example) for their CILEX (Chartered Institute of Legal Executives) employees, and for PSC fees.
362. We will publish resources to help candidates navigate the range of options available. We have already published initial resources on the SQE tailored to the needs of different stakeholders to help prepare people well in advance for the choices they will need to make.
363. We have launched a Facebook page – Career in Law – to provide information to aspiring solicitors about how to qualify as a solicitor in the future. This includes information about the cost of qualifying and the different options available to students and other aspiring solicitors. We will also provide easily accessible and authoritative data on candidate performance on the SQE by provider to inform the purchasing decisions of candidates and employers.
364. We believe that, overall, our reforms will help to drive a more competitive and flexible legal education and training market which will benefit potential

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<sup>55</sup> Barbri International has estimated its SQE1 and 2 fees at £7,000, based on the optional model for SQE2, rather than the final proposed uniform design.

solicitors from a diverse range of backgrounds and address some of the issues with cost inherent in the current system.

## Use of single best answer multiple choice tests

365. Full details of this issue and our response are set out in paragraphs 106-117.

## Qualifying work experience

### What are stakeholders' concerns?

366. Stakeholders, including the Junior Lawyers Division, are concerned that widening of the scope of QWE could encourage less responsible employers to take on candidates without providing appropriate training, or to exploit them by, for example, making them work for free.

### What is our response?

367. QWE is intended to address the two issues we have identified with the current period of recognised training:
- there are insufficient training contracts available, resulting in some candidates who have the talent to work as a solicitor getting stuck (the training contract bottleneck); and
  - there is no standardisation of the assessment of competence at the end of the period of recognised training, which is the final gateway before admission as a solicitor.
368. Experience that can count as QWE is therefore broader. And competence is assessed through the standardised SQE, not through QWE. The experience is developmental and does not include an assessment of candidates' competence.
369. The regulations covering QWE were approved by you in our first application. As we set out in our first application, the purpose of QWE is to expose candidates to clients, to ethical problems and to how solicitors work in practice. It will allow candidates to develop the competences to prepare for SQE2. But the SQE, not the QWE, will allow us to assess whether a candidate has developed the competences in our Statement of Solicitor Competence.
370. Feedback from stakeholders has also told us that workplace experience has a significant role to play in assuring both the credibility of the new approach to qualification and the solicitor brand. The demands of the SQE2 assessments, and the publication of pass rates by training providers, should themselves drive learning and high quality training.
371. In addition, we regulate solicitors' conduct in relation to all those they employ or supervise. This means that we are able to take action where we see poor

practice or an improper approach to QWE sign off for example. These requirements can be found in a number of different sources.

- The competences to be developed are contained in the Statement of Solicitor Competence.
- Requirements not to take unfair advantage, and to properly supervise and manage staff are set out in the Codes of Conduct for firms and for individual solicitors.
- Our disciplinary approach is set out in our Enforcement Strategy and we can take action when we have evidence that employers are not meeting their obligations.

372. Poor employment practices can arise under the current system. SQE cannot eradicate them. However, we hope that it can help. For example, the wider availability of QWE means people may be less likely to put up with poor treatment than in the present system where there is a scarcity of alternative training contracts. Many people take on paralegal roles in the hope that they will eventually be offered a training contract. Under the current system, they can get limited credit for this work experience, and only if they eventually find a training contract. But when SQE is introduced, they will be able to count this experience as QWE.

373. The enhanced flexibility provided by the move away from traditional training contracts to QWE means that candidates undertaking QWE could have a range of different experiences, depending on where they choose to gain their QWE. We see this as a positive development. It will provide opportunities for candidates to get their QWE in organisations where traditional training contracts are not offered, in ways which suit their individual needs and in a range of sectors and subject areas. The wider choice and flexibility of QWE should encourage a more diverse profession. This could have a positive impact on the availability of a diverse range of services and improve access to justice amongst consumers from diverse backgrounds who want to use solicitors more like themselves and who understand their communities. We therefore believe that QWE will have a positive impact on the regulatory objectives, not just in encouraging a more diverse profession but also in promoting the interests of consumers and, ultimately, widening access to justice.

374. This flexibility of QWE means that it is not possible, or desirable, to put in place prescriptive requirements to regulate candidates' workplace experience. The risk of introducing prescriptive requirements is that it limits the availability of QWE and recreates the problems of the training contract bottleneck. We consider that publication of SQE performance data and the protections set out at paragraph 371 provide appropriate safeguards whilst introducing greater flexibility.

375. We removed the minimum salary for trainee solicitors in 2014. We do not see a case for requiring it for QWE, particularly given the introduction of the national minimum wage. QWE will be subject to the national minimum wage legislation, as is the current PRT and legal apprenticeships. Indeed, given that QWE can encompass any form of work experience in legal services

which gives a candidate the opportunity to develop the competences in the Statement of Solicitor Competence, it is difficult to see how a minimum salary for QWE would work in practice. Further, we have allowed work in a law clinic or on a placement (which may not be done under an employment contract and may not be paid) to count as QWE and this will be beneficial to students. We have also published a link to guidance from the Sutton Trust on paying for work placements.

376. Our online resources, together with resources provided by other stakeholders will help candidates when choosing a provider of QWE. We will monitor the effectiveness of the information available through our SQE evaluation. Since you approved our first application, we have published information about QWE on our website and a series of answers to commonly asked questions. In June, we published guidance for candidates on claiming previous and current work experience as QWE. This includes a template designed to encourage candidates to seek exposure to the competences that will be assessed as part of the SQE. The guidance and template were developed with The Law Society, the Junior Lawyers Division, university law schools, the Clinical Legal Education Organisation and firms.
377. We also ran a stakeholder survey and delivered webinars specifically on the topic of QWE.
378. Some stakeholders have also told us they are concerned that some solicitors may refuse to sign off a candidate's QWE. To address this, we will publish guidance in August for solicitors and candidates on signing off experience. This will explain that solicitors have a responsibility to sign off QWE, that they are not determining whether a candidate is competent or not, and that they need to proactively check a candidate's records. It will set out what a candidate can do if a solicitor refuses to sign off their QWE.
379. We want to encourage candidates, firms and organisations to make the most of the development opportunities QWE can provide through our resources. In autumn 2020, we will publish guidance on what good QWE looks like for firms and candidates. This will include information about how a firm or law clinic can embed professionalism and ethics through QWE and make sure that candidates are exposed to good ethical role models. This guidance will not be static. We will regularly update it. We will provide checklists for firms on what to consider when offering QWE, case studies of good experience and supervision, videos from organisations offering good QWE and top tips for candidates to get the best out of their work experience.
380. In all this, we will continue to work with a range of stakeholders, including the Law Society, the Junior Lawyers Division, university law schools, the Clinical Legal Education Organisation and firms, to develop resources to help candidates and employers understand and maximise the development opportunities that QWE is designed to achieve. We are working closely with the Law Society to share our thinking so that their resources complement what we produce.

### How have we engaged on EDI issues?

381. In 2017, published an EDI Risk Assessment and commissioned independent advice, through the Bridge Group<sup>56</sup>, to make sure that we met our obligations under the public sector equality duty.
382. Bridge Group have updated their report and this is attached at annex 9.
383. We have published an updated EDI Risk Assessment (see annex 4). In order to make sure we understood the EDI impacts of our approach and to help us get the assessment design right, we have engaged extensively with thousands of stakeholders. We have run a webinar on the EDI issues highlighted in the EDI Risk Assessment. And we have sought stakeholder views on it through a survey, through our SQE Reference Group and through targeted meetings with stakeholder groups. The updated EDI Risk Assessment reflects interactions with interested parties – and specialist advice – since we published the original Risk Assessment.
384. We have also run a recent webinar on the topic of fair assessment and reasonable adjustments and sought feedback on these topics through our SQE Reference Group.
385. We have met regularly with interest groups including the Law Society and their divisions: Ethnic Minority Lawyers Division, Lawyers with Disabilities Division and Junior Lawyers Division. Through the SQE Reference Group, we have also met regularly with the Young Legal Aid Lawyers, the Association of Law Teachers, the Society of Legal Scholars and the City of London Law Society.
386. We have engaged through workshops with groups including the Black Solicitors Network, Society of Asian Lawyers, British Nigeria Law Forum, Society of British Bangladeshi Solicitors and Birmingham Black Lawyers.
387. As stated, we have worked closely with our SQE Reference Group<sup>57</sup>, which also includes representatives from specific interest groups, and our LinkedIn group, which has a wide membership (around 1,370 members drawn from the profession, universities and other training providers), on specific issues including EDI impact, reasonable adjustments and the final design of the SQE assessments.

### What are stakeholders' views?

388. Full details of stakeholders' views on the EDI impact of the SQE are set out in the updated EDI Risk Assessment (annex 4). Overall, across our stakeholder engagement the main EDI benefits of the SQE which we have identified include:

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<sup>56</sup> Introduction of the Solicitors Qualifying Examination: Monitoring and Maximising Diversity, The Bridge Group, March 2017.

<sup>57</sup> A list of members is at footnote 1.

- providing a level playing field where every candidate is assessed to the same standard regardless of their training or prior achievement
- introducing modern best practice and consistent design to assess candidates fairly
- tackling the training contract bottleneck through having a more flexible approach to QWE. This could reduce the risk of talented people getting stuck in the qualification process
- the creation of a more competitive training market, where people have more choice and more opportunities to earn and learn. There is already evidence to suggest some options will be more affordable than the current admission route a centralised assessment, with extensive, comparable data on results, means that we will have the ability to monitor performance effectively by diversity characteristics.

389. These are the key risks and concerns raised by stakeholders.

- Fairness - Some stakeholders are worried that the assessment methods proposed for the SQE, in particular the use of multiple-choice questions (MSQs) and computer-based testing, could potentially disadvantage particular groups of candidates, especially those with protected characteristics. Stakeholders have also raised concerns that the requirement to sit the SQE in a single, and potentially lengthy, assessment session could discriminate against candidates with particular disabilities/ conditions, or for those with family or other caring commitments. There is also concern about the differential performance by candidates from BAME groups which we observed on the SQE1 pilot.
- Cost - Stakeholders, including the Law Society and Junior Lawyers Division, have expressed concern that the new system may not reduce costs for those seeking to become solicitors. This would perpetuate some of the problems with the current system faced by those from less affluent backgrounds.
- Access - The Law Society and Junior Lawyers Division have expressed concerns that firms and employers could be sceptical about the quality of alternative/new training providers and so would be most likely to stay with tried and trusted routes and providers. There could be also be a perception that candidates who gained their QWE as a paralegal or working in a legal advice centre (these candidates are more likely to come from non-traditional backgrounds) had not reached the same standard of competence as those who had followed a more traditional training contract route.
- The quality of QWE - This is addressed in paragraphs 366-380 above.

## What is our response?

390. We have continued to engage with stakeholders, including representatives from special interest groups, on the potential risks and stakeholder concerns about the SQE and the wider qualification framework. We have developed and designed the SQE with these issues firmly in mind. We have carefully considered the potential benefits and risks. Overall, we consider that the potential benefits of the introduction of the SQE for candidates from protected groups, which include the removal of the requirement for specified pathways, the removal of the requirement for a formal training contract and the introduction of more flexible QWE, the greater choice of pathways and price points and the provision of transparent data and information, outweigh the potential risks.
391. Some stakeholders have expressed concern that the impacts of the SQE will not be fully realised until it is introduced. They suggest that this is unfair to candidates, particularly those who will take the SQE in the early years. It is correct that the impact of the SQE cannot be fully analysed until the SQE is introduced. This was confirmed by the Bridge Group in both their 2017 and 2020 reports. They advise that, for this reason, we should continue to emphasise the importance of gathering and analysing accurate data, throughout the implementation process and beyond; robustly and transparently reviewing and evaluating impact; and taking evidence-informed decisions regarding the continued development of the SQE.
392. The fact that the impacts cannot be fully identified until SQE is introduced is not a reason not to proceed. This approach would prevent the development and introduction of any new assessment and ignores the issues of the current training and assessment framework. It is normal practice, and indeed good practice, for a major policy change or any good quality qualification to be reviewed and improved on an ongoing basis.
393. We will continue to engage with stakeholders. Through ongoing and transparent evaluation, we will check whether the potential benefits we have identified are being realised and whether the mitigations we have put in place have minimised the risks. We will do this through the transparent collection, analysis and reporting of data on candidate performance on the SQE at each assessment session and through the regular collection and analysis of data on the profile of the profession. We will also do this through our ten-year programme of evaluation of the SQE which will include an evaluation of market and EDI impacts and stakeholder perceptions.
394. We address each of the key areas of concern in detail below.

### Cost

395. As stated above, the candidate fee for the SQE will be £3,980 for SQE1 and SQE2
- SQE1: £1,558
  - SQE2: £2,422

396. These costs are comparable with other professional assessments, on time per test basis.
397. The cost of any training will be additional. We have engaged extensively with education and training providers on the potential benefits of the SQE and to encourage innovative approaches to the training and support they could offer to candidates in the future. We have engaged with providers through our SQE conferences, through participation in external events and through individual meetings. From our discussions, we anticipate there will be a wide range of training models, and price points. We know that the training market is already developing - see paragraph 354.
398. Some of these options will be materially cheaper than the current route to admission. Where a candidate trains through a combination of a law degree integrating SQE1 preparation there would be no additional training cost for SQE1. Where a candidate requires SQE training over and above a law degree and their QWE, early market indications suggest that training costs could be lower than the LPC.
399. However, we are also aware that early indications suggest that not all universities wish to incorporate SQE preparation into their law degree. So SQE preparatory training could still be needed for SQE1, even after completing a law degree at university, particularly in the early years. And candidates may need some classroom training in addition to their QWE before taking SQE2.
400. The structure of the SQE also helps address the 'LPC gamble'. See paragraph 358.
401. We recognise the risks that, if firms wait for SQE1 results before recruiting, candidates might have to self-fund SQE1 training and assessment. But we do not think this is a reason not to proceed with the SQE. It is for employers to decide at what point they recruit. Some recruit two years in advance – and can use success in the SQE as a condition of acceptance, so they have that assurance of standards. This group may pay for SQE1 training and assessment. Other firms may want to see SQE results and use it as a selection tool. As we point out above, the upfront cost for SQE1 is £1,558 (plus training) instead of up to £16,750 for an LPC. This represents a much lower financial risk than under the current system. The access to data could also encourage fair recruitment at other points, including for newly qualified solicitors.
402. It is also possible that providers with good candidate outcomes could increase the price of their courses which would disadvantage candidates from less affluent backgrounds. Again, we do not think this is a reason not to publish data by provider. We believe the benefits to candidates will outweigh the potential risks. We hope that the publication of this data will drive high standards across the training market. And if some providers increase their course costs this could encourage other providers to undercut them by exploring more cost-efficient ways to deliver high quality courses. Most importantly, we anticipate that candidates from all backgrounds, including those from less affluent backgrounds, will have a far wider choice of provider

and price points than under the current system, including some universities who include SQE1 training in their law degrees, at no additional cost to students.

403. As stated above, there is government funding for degree courses which incorporate SQE training and for SQE costs through the solicitor apprenticeship. However, student loan funding and Disabled Students Allowances are not currently available for the cost of the SQE assessment itself, or for the cost of private courses that a candidate may choose to take. The Disabled Students' Allowance and student loan funding are schemes operated by the Government. We do not set the eligibility criteria and we are not involved in deciding who receives the allowance. But, as also stated, we have discussed the funding issue with the Law Society and together we will continue to discuss this issue with government.
404. Where employers offer solicitor apprenticeships, the Education and Skills Funding Agency has confirmed to us that it is possible for graduates join the apprenticeship programme for the last years of their training, in which case the cost of their training and assessment (on a pro rata basis) is recoverable through apprenticeship funding. The upfront cost, as set out above, is significantly lower and the SQE offers real flexibility (for example, online training or integrated approaches combining classroom and workplace learning), providing more scope for 'earning while you learn'.
405. We know from talking to law firms that some employers are considering paying SQE costs for employees, as they currently do, for example, for their CILEx employees, for PSC fees and for the GDL and LPC.
406. We have contractual mechanisms with Kaplan to make sure that we have full visibility of the costs of the delivery of the SQE assessments. Candidate fees will be agreed with us in advance and must represent value for money.
407. We will publish resources to help candidates navigate the range of options available. We have already published initial resources on the SQE tailored to the needs of different stakeholders including employers and prospective candidates. This will help to mitigate the impact by preparing people ahead about the options so they can navigate the choices available. In line with the Bridge Group recommendations, we will clearly define and target stakeholder groups and make sure our materials are inclusive. We will take proactive steps to reach key groups.
408. We have launched a Facebook page – Career in Law – to provide information to prospective students and aspiring solicitors about how to qualify as a solicitor in the future. This includes information about the cost of qualifying and the different options available to students.
409. We will also provide easily accessible and authoritative SQE candidate pass rates by provider to inform the purchasing decisions of candidates and employers.
410. We will continue to engage with providers to help them to understand the benefits of the new system and the role that they can play in creating a

competitive and healthy market for SQE training. We plan to launch a community of practice for providers to facilitate this.

411. We believe that, overall, our reforms will help to drive a more competitive and flexible legal education and training market which will benefit potential solicitors from a diverse range of backgrounds and address some of the issues with cost inherent in the current system. This will help to promote the regulatory objective to encourage an independent, strong, diverse and effective profession. It could also help to promote the interests of a diverse range of consumers and improve access to justice.
412. The market is already responding and will continue to develop in the years after the introduction of the SQE. We will carefully monitor and analyse any impacts on diversity and inclusion, and work with the training providers to maximise the positive effects or address any emerging difficulties.
413. As stated, early indications show that a range of options for SQE preparatory training will emerge. These will offer choice and a range of price points for candidates, with some options coming in cheaper than the cost of the LPC. The training market will continue to develop once the SQE is introduced. But critically, it will be at a structural level more competitive both on price and quality, because of greater transparency, choice and accountability.
414. Taken together, and working with stakeholders, we anticipate that:
- the wide range of options for training and preparation that will develop over time
  - the publication of market data to encourage training providers to deliver quality training that will provide transparency for candidates
  - the wider range of opportunities to earn and learn
- should make it possible for those from less affluent backgrounds to access SQE training.
415. We also anticipate that the removal of the 'LPC gamble' will benefit candidates from less affluent backgrounds.

## **Fairness**

416. The SQE will provide a level playing field for all candidates, whatever their backgrounds. It will assess all candidates to the same standard regardless of their training or prior achievement. Candidates who attended less prestigious universities, or who choose new routes to qualification, can demonstrate to employers that they have reached the same standard as candidates who attended more prestigious universities or followed more traditional routes. This is in line with the requirement in the Better Regulation Principles to be consistent and transparent.

417. The SQE will bring solicitor assessment into line with best practice in other high stakes professional licensing assessments. It will provide a high degree of assurance that the candidates who pass are those who should pass, again regardless of their prior education or achievement. This is essential for proper consumer protection and public confidence in the profession. And is in line with the regulatory objectives.
418. The data generated from a large-scale standardised test will also provide more detail on the performance of different groups of candidates than is possible in the current system. This will allow us to monitor performance of candidates by protected groups and by socio-economic characteristics on an ongoing basis<sup>58</sup>. Overall, SQE introduces a step-change forward in professional legal assessment.
419. We recognise the challenge in higher education in relation to performance by different protected characteristics<sup>59</sup>. This is also the picture for professional examinations, for example in medicine<sup>60</sup>, pharmacy<sup>61</sup>, architecture<sup>62</sup> and barrister<sup>63</sup> qualifications.
420. In the current domestic route to admission as a solicitor, there is consistent under-performance by ethnicity on both the GDL and LPC. For example, in academic year 2017-18 (the latest for which we hold data) GDL completion rates were as follows: 68% for white students; Asian/Asian British students: 49%; and Black (African/Caribbean/Black British): 43%.
421. For the LPC, completion rates are: 66% for white students, 48% for Asian/Asian British students and 35% for black students.
422. There was a disparity of performance in both the SQE1 and the SQE2 pilots, by binary ethnicity with BAME candidates performing worse as a group overall than white candidates. However, the assessment tasks used in the SQE are widely used elsewhere and have been designed to ensure fair results. We have found no evidence that any of these assessment methods

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<sup>58</sup> We will collect data on gender, transgender, disability, ethnicity, sexual orientation, religion or belief, main secondary school attended between 11 and 16, highest level of qualifications achieved by parent/carer, work of the highest income earner in the household, whether they are carer, country of birth, country of residence, jurisdiction of residence, nationality.

<sup>59</sup> [Universities UK: Closing the Gap](#)

<sup>60</sup> [Ethnicity and academic performance in UK trained doctors and medical students: systematic review and meta-analysis](#): “Ethnic differences in academic performance are widespread across different medical schools, different types of exam, and in undergraduates and postgraduates. They have persisted for many years and cannot be dismissed as atypical or local problems. We need to recognise this as an issue that probably affects all of UK medical and higher education. More detailed information to track the problem as well as further research into its causes is required.”

<sup>61</sup> ([https://www.pharmacyregulation.org/sites/default/files/2017-09-07\\_-\\_17.09.c.02a\\_june\\_2017\\_performance\\_breakdown\\_by\\_characteristic.pdf](https://www.pharmacyregulation.org/sites/default/files/2017-09-07_-_17.09.c.02a_june_2017_performance_breakdown_by_characteristic.pdf) - see p.3

<sup>62</sup> RIBA (Education Statistics 2017-18) (<https://www.architecture.com/-/media/GatherContent/Education-Statistics/Additional-Documents/Education-Statistics-2017-18.pdf>)

<sup>63</sup> <https://www.barstandardsboard.org.uk/uploads/assets/7a20eb3e-b152-4777-9e821417bf596eed/bptckeystatisticsreport2019.pdf>

are intrinsically biased. But we will continue to review any further available evidence

423. The SQE will provide us with much better data than under the present system to monitor and evaluate the outcomes of candidates from BAME backgrounds, in line with our obligations to be transparent and accountable. Under the present system, 110 different providers offer the professional legal assessments specified on the route to qualification as a solicitor of England and Wales. This means that candidates take a diverse range of different exams with different outcomes. Most of the exams considered in isolation will not have large enough data sets to conduct for instance a meaningful analysis of outcome by disaggregated ethnicity. Combining the datasets from different exams, while it may have some value, may also produce statistics which mask the reality of what is going on where for instance candidates from protected groups have different outcomes from different exams.
424. The introduction of the SQE as a national qualifying exam will enable, for the first time, collection and analysis of a large data set covering all candidates who have sat the same exam. This will provide a sound basis from which to measure differential outcomes and perhaps even more importantly, to measure the effect of actions taken to improve equality of opportunity. It will enable for instance meaningful multivariate regression analysis to be performed investigating the “true” predictors of performance in a situation where there are overlapping variables. It will also facilitate use of differential item functioning (DIF) which can be used to look at whether particular questions are disadvantaging protected groups over and above any general differences in performance between those groups.
425. As stated, we remain confident that single best answer multiple-choice questions are an appropriate method for assessing the FLK and that they will enhance assessment quality. See paragraphs 106-117. In their 2020 report, the Bridge Group concluded that: “single best answer multiple choice tests are as objective an evaluation methodology as possible (ie not subject to differential performance by background, and not subject to examiner bias).”
426. In light of stakeholder concerns that multiple choice tests could discriminate against women, we asked Kaplan to conduct an investigation into this point. Looking at QLTS data over five years of testing, their conclusion was that “the differences on performance and results between males and females on the QLTS MCT are not marked enough to suggest bias in any direction. This is even ignoring the (very considerable) limitations of drawing conclusions about bias in methods of testing from performance data.”
427. There is no evidence that MCQs are intrinsically problematic. We are aware of case law which confirmed MCQs were not suitable for an individual candidate with autism. But the court did not consider them unsuitable for all autistic candidates where reasonable adjustments can be made. Each request for reasonable adjustments will be considered on an individual basis, taking into account the individual circumstances of the application.

428. We recognise the challenges of differential performance by protected minority groups that exist across education. They are based on multiple factors, many of which are outside of our control. It is nevertheless of concern and we plan to commission research to understand better the causes of the disparity in performance. This is in addition to our plans for the full evaluation of the SQE. It will help us understand what the reasons are and whether we can work with others to help to address any factors we identify.
429. We have a responsibility to make sure that SQE is fair to all candidates. This is a responsibility we take very seriously. We will include robust quality assurance measures in the SQE. We will recruit and train a diverse pool of question writers and assessors. We will provide diversity training for all question writers, markers and assessors and we will monitor assessor decisions. Kaplan has already appointed appropriate external expertise to advise on these issues. We intend to continue to monitor the way diversity affects outcomes across the profession and will consider whether there is potential for research into these challenging issues.
430. The making of reasonable adjustments for candidates with disabilities is a legal obligation, which we require Kaplan to comply with. Our contractual arrangements provide for the recording and monitoring of adjustments procedures. Kaplan has many years' experience of making reasonable adjustments, not least in its running of QLTS assessments. In preparing for the introduction of the SQE, it is already planning for an increase in requests for reasonable adjustments. It is a contractual requirement that each of the SQE assessment centres is compliant with all applicable equalities legislation.
431. Bridge Group said that: "We are reassured that the SRA has considered effective practices in relation to reasonable adjustment." They recommend that to build confidence and anticipate further questions, we must link to and promote the Kaplan policies and practices for reasonable adjustment; and detail the process for students applying for adjustments. We will publish the reasonable adjustment policy and supporting guidance this summer. We will also continue to engage closely with representatives from disability groups to understand their concerns and build trust and confidence.
432. The SQE will introduce a single standard for entry into the profession. However, we hope the introduction of the SQE will herald a wide range of diverse training routes and that this will encourage a more diverse group of candidates to become solicitors, in line with the regulatory objective to encourage an independent, strong, diverse and effective legal profession. For example, people changing from other careers or those with caring responsibilities may struggle to afford the time or cost of traditional classroom-based courses. Online training, or training combined with working in legal services, may be more attractive to them. The QWE supports this "earn while you learn" approach. We also hope that encouraging a more diverse group of candidates to become solicitors could help to improve access to justice.
433. The SQE will allow all candidates to show that they have met the same high standards, regardless of their training route or prior educational

achievement. We will demonstrate the ongoing fairness and robustness of the SQE through both public reporting of candidate results and by independent scrutiny of the SQE assessment and independent evaluation of the reforms as a whole.

### Access

434. One of the major barriers to qualification is the ability to secure a training contract. We know that the under-representation of candidates from disadvantaged, socio-economic backgrounds and some ethnic groups in the legal and other professions is a complex and longstanding problem with no easy solutions. Recognising that there are already several routes to the profession, there is already a perception of a two-tier qualification system for solicitors. In relation to the SQE, it is not always clear exactly what stakeholders mean when they refer to a 'two-tier' profession. It could mean the difference between traditional training contracts and QWE, or the difference between City firms and others, or the difference between apprentices, legal executives and others, or the difference between candidates from Russell group and non-Russell group universities.
435. When the SQE is introduced, candidates will not need to gain their work experience under a formal training contract. We will recognise any work-based experience that allows a candidate to develop the competences in the Statement of Solicitor Competence.
436. QWE offers a wider range of options, helping to tackle the "training contract bottleneck" that causes so many aspiring solicitors real difficulty. Periods of experience acquired through a placement as part of a sandwich degree, through working in a student law clinic, as an apprentice or a paralegal, or under a formal training contract could all contribute to this requirement. And it will provide opportunities for firms to provide work experience in circumstances where – because of their size, resources, or niche areas of law – they might currently not be able to provide a period of recognised training.
437. Firms and employers will not be making any judgments about whether a candidate is competent to be a solicitor. Instead, we will test their competence via the SQE2 assessments.
438. As the Bridge Group point out: "the SQE has the powerful potential to level the playing field for candidates – assessing candidates in a standardised and comparable way regardless of entry route and prior access to opportunities".
439. QWE can also be undertaken part-time or full-time. Stakeholders have told us that the ability to gain QWE part-time could benefit candidates with individual needs and candidates who prefer to undertake their QWE at the weekends because they are studying or working during the week.
440. The SQE will help to address the perception of a two-tier profession by making sure that everyone meets the same standards, regardless of how their route to qualification. At its core, the SQE delivers a single standard and single assessment which applies to all candidates. Candidates will be able to share their marks on the SQE with prospective employers. This

avoids the need in current recruitment practice for employers to look back at A level results, because university degree classifications are not sufficiently standardised (between universities or over time) or differentiated (with three-quarters of graduates being awarded a first or 2i class degree).

441. We believe that employers' views are in fact nuanced and varied: some welcome the new routes, like apprenticeships. Apprenticeship numbers have now grown to more than 500 since 2016. 61% of respondents to our recent survey<sup>64</sup> said that they welcome the new solicitor apprenticeships. 64% of respondents felt that apprentices taking the same SQE assessment as other qualifying solicitors will help demonstrate the quality of the apprenticeship route to admission. Others are more conservative. But, whatever stakeholders' views, the responsibility for encouraging and introducing open-minded and fair recruitment practices lies not just with us but also with the professional body, and employers themselves. We know that some employers already have plans to change the way they train and recruit solicitors. Our new framework will give recruiters more objective data to drive fair recruitment. Change may not happen overnight, but we will continue to monitor and collect EDI data and we hope to see change over time.
442. Further, the fact that some employers may under-value particular routes to practice is not a compelling reason to discourage new pathways. Overall, the robust assessment and standardised data provided by the SQE, combined with greater flexibility in training pathways and QWE, will encourage a wider range of talented candidates to qualify as a solicitor.
443. We recognise that employer trust in the SQE is key to realising the benefits arising from more flexibility in training and in QWE. Over time, we believe that the quality of the assessment and our ongoing engagement with stakeholders will develop confidence in the new approach to qualification.
444. When the SQE is introduced and as the market develops, we may see more employers making changes. And our SQE Reference Group has told us that they expect perceptions of the SQE will change over time. All candidates will take the same, high quality examination. So candidates who have not followed a traditional route to qualification will be able to demonstrate their worth to employers through their results on the SQE. We will continue to engage with the profession to explain the potential benefits of the new system. We will also evaluate the market impact of the changes both in the short-term and over the longer-term.
445. We know from our discussions with stakeholders that some employers plan to require candidates to have passed both SQE1 and SQE2 before they start their QWE. There is nothing in our regulations to stop employers from doing this because we want candidates to have the flexibility to be able to start their QWE and take the SQE assessments at a time to suit their own circumstances. But there is a risk that, if lots of employers require SQE1 and SQE2 before candidates can start QWE, candidates who are self-funding will have to take the financial risk of paying upfront for SQE1 and SQE2

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<sup>64</sup> We received 318 responses to a survey on apprenticeships targeted at law firms and in-house legal teams.

before they know whether they have secured a QWE position. This could disadvantage candidates from less affluent backgrounds and deter them from seeking to qualify as a solicitor.

446. It is by no means certain that this model will spread; we see a range of alternative approaches emerging, including apprenticeships, and integrating SQE1 and SQE2 into QWE<sup>65</sup>. In the current system, some City firms already require their trainees to take a prescribed LPC. Other parts of the profession have not followed suit.
447. But we will carefully monitor and analyse any impacts on diversity and inclusion, and work with the training providers to maximise the positive effects or address any emerging difficulties.
448. In its 2020 report, the Bridge Group pointed out that: “increasing diversity in the profession is dependent critically on the actions of employers and training providers, and actions by the SRA will achieve only modest gains without corresponding action from stakeholders in the sector”. They also pointed out that there is a lack of diversity in some universities/law schools.
449. We know that some employers already have plans to change the way they train and recruit solicitors. But others may not intend to make any significant changes. However, the narrow recruitment practices of some firms and employers and the fact that some employers may be cautious about some of the new routes to qualification are not compelling reasons to retain the traditional two-year period of recognised training. This was also confirmed in the Bridge Group 2020 report.
450. We do recognise that employer trust in the SQE is key to realising the benefits arising from more flexibility in training and in QWE. But we believe that the quality of the assessment and our ongoing engagement with stakeholders will develop that confidence over time, once SQE is introduced. We intend to carry out a study to examine stakeholders’ perception of the SQE a couple of years after introduction. And a perception study will also be included in the full evaluation to be carried out five years after introduction.
451. We considered carefully whether we should have a requirement for QWE to be completed before SQE2. We do not see a regulatory justification for this restriction. See paragraph 224.

### **What are we doing to minimise the risks we have identified?**

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<sup>65</sup> Reporting on the new training system to be introduced by Deloitte: “The new SQE Training Contracts enable law students to take up their place straight out of university, allowing them to start earning immediately while gaining qualifying legal work experience before sitting their SQE1 and 2. This differs from the current arrangements where trainees do not take up their place until after they have completed an additional year studying the Legal Practice Course (LPC).” (QS Higher Education News)

452. We have set out the full range of actions we have taken and intend to take to mitigate against the potential EDI impacts in our risk assessment at annex 4. These include, but are not limited to:

- We have fully tested and piloted the SQE assessments and made adjustments to the design of the assessments in light of the findings. And we have put in place independent scrutiny of the SQE design, development, piloting, testing and implementation.
- A wide range of reasonable adjustments will be made for those with disabilities on production of appropriate expert evidence. These might include, but are not limited to, additional time, enlarged/coloured assessments, special seating/lighting, rest breaks, a personal assistant, a scribe, a reader, a separate room and invigilation, use of specialist equipment, rescheduling of assessments. Each SQE assessment centre will be compliant with all applicable equalities legislation.
- We will monitor performance by protected characteristics on the SQE on an ongoing basis and conduct other equality analyses as appropriate.
- All examiners, markers and question writers will have diversity training.
- Kaplan will seek to recruit a diverse examiner team.
- We have continued to engage with universities, other providers of SQE preparatory training and publishers to make sure they have timely information about the SQE to allow them to design appropriate courses and materials.
- We have published information about the final cost of taking the SQE assessments. This is comparable with other professional assessments, on time per test basis. Early market indications suggest that there will be options available to candidates where the total cost of training and assessment will be less than the cost of the LPC.
- We have made sure, through our contract mechanisms, that the assessment supplier has a transparent funding model for the delivery of the SQE assessments and all candidate fees will be agreed with us in advance.
- We have published initial resources on the SQE tailored to the needs of different stakeholders.
- Through the resources, we will explain how performance in SQE will provide objective evidence of the competence of a candidate, and therefore help candidates to market themselves, even if they have followed a less traditional route to qualification.

- We have launched a Facebook page – Career in Law – to provide information to prospective students and aspiring solicitors about how to qualify as a solicitor in the future. This includes information about the cost of qualifying and the different options available to students.
- We will continue to monitor the way diversity affects outcomes across the professions and consider whether there is potential for joint research into these challenging issues.
- We will conduct a full independent evaluation which will be carried out post-implementation.
- We will carry out research to help to understand the underlying causes of the disparity in performance in assessment.
- We will report on the profile of SQE candidates and newly qualified solicitors by protected characteristic and socio-economic background to monitor the impact of the SQE on the profile of the profession.
- We will provide easily accessible, independent and authoritative data on candidate performance on the SQE by provider to inform the purchasing decisions of candidates and employers.
- We will continue to engage with the government to explore whether other career and professional development loans can be used for SQE preparatory courses.
- We will publish an information strategy in the autumn which will set out what information will be available to stakeholders and when. This will also explain how we plan to take forward the Bridge Group recommendations.

## Impact on small firms

### What are stakeholders' concerns?

453. Some stakeholders, notably the Justice Select Committee, have raised questions about the impact of the SQE on small firms. They say that they are concerned that full account is taken of how the changes will affect small high street firms. They think it would be unwise to “rely too heavily on the positive responses of the large firms that operate in quite different circumstances”.

### What is our response?

454. We have identified a range of benefits that we anticipate for smaller firms as a result of the introduction of the SQE. These include:
- better guarantee of standards. Firms can be confident that all candidates have been assessed to the same, rigorous standard.
  - better information to recruit staff. Firms can choose to use SQE scores as a tool to help with recruitment, both for unqualified and, over time, qualified staff.
  - greater flexibility to recruit staff, including potential to consider career progression for long standing employees. The removal of the stricter requirements for training contracts will make it easier for firms to progress their paralegals towards qualification as a solicitor. It could also encourage them to take on more unqualified staff with a view to progression to qualification.
  - opportunity for more tailored training. Without the restrictions of the training contract, firms will have more flexibility to tailor the training for unqualified staff progressing to qualification to the needs of the business.
  - opportunities through apprenticeships. We have had positive feedback about the benefits of apprentices from legal businesses - apprentices acquire the skills needed surprisingly fast. They are also committed and loyal employees with lower levels of turnover than with other employees. The cost of training and assessment for apprentices is paid through the apprenticeship levy. Employers with payroll of less than £3m do not need to contribute to the levy<sup>66</sup>. This can also include graduate apprentices who can complete the last years of their training under an apprenticeship with the costs of the training and assessment covered by the apprenticeship levy (on a pro rata basis).
455. We have met regularly throughout the development of the SQE with the Sole Practitioners' Group. We also have representation from smaller firms on our SQE Reference Group<sup>67</sup> In July 2020, we ran a webinar targeted specifically at smaller firms.
456. Our formal consultations on SQE were open to all stakeholders, as were our recent webinars and surveys. Across our two main consultations in 2015 and 2016/17, around 10% of responses were from representatives from smaller firms. A very high proportion of responses to those consultations came from education and training providers rather than firms. We also received responses to our recent surveys from smaller firms,

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<sup>66</sup> But they do need to pay 5% of the apprenticeship training and assessment cost.

<sup>67</sup> For example, through LawNet which represents more than 70 firms ranging in size from £2m- £25m in turnover.

457. We held our roadshows last autumn at regional venues to attract smaller firms.
458. There was feedback in response to the 2016/17 consultation that the current training contract system was becoming less attractive for small firms and that the flexibility provided by the introduction of QWE could make it easier for candidates who choose to work in smaller firms to gain the relevant experience to qualify as a solicitor.
459. Some smaller firms we spoke to last autumn told us that they would prefer SQE1 to include a skills assessment as they would prefer candidates to have been assessed in basic legal skills before they recruit them into the workplace. (See paragraph 101) Some also told us that, if we remove skills from SQE1 they would require candidates to have passed both SQE1 and SQE2 before starting their QWE. As stated in paragraph 105, there is a strong justification for removing skills from the SQE1 assessment. And we concluded that, should businesses have skills requirements for non-qualified staff, the proper place to assess their requirements is through their own recruitment and selection processes. Overall, we believe that the introduction of the SQE could bring significant benefits for smaller firms through greater flexibility to recruit staff, the opportunity for more tailored training and better guarantee of standards.

## Change to the Principles for Qualified Lawyers

### What did we engage on?

460. We ran a formal consultation on the proposed minor changes to the Principles for Qualified Lawyers between 26 March and 6 May 2020. We promoted the consultation to our stakeholders through our social media channels and our newsletters. We contacted each jurisdiction we recognise directly.

### What did people tell us?

461. We received 16 responses from a law firm, individuals, the Law Society, the Junior Lawyers Division, the New Zealand Council for Legal Education and the Welsh Language Commissioner. We considered all responses.
462. The majority of respondents supported our proposals. They suggested that the changes were in the interests of consumers and overall public trust in the profession.
463. Some respondents highlighted possible operational impacts which might arise from our proposals. For example, Junior Lawyers Division suggested that some qualified lawyers seeking recognition of a professional title which has not previously been recognised by us and has not been the subject of an application to us by the regulatory/professional body, could be burdened by having to make an application.

### How did we respond?

464. We intend to proceed with the minor changes proposed in the consultation. We will take into account the operational impacts highlighted by respondents when we implement the new approach to recognition of qualified lawyers. For example, we will make the process as straightforward as possible and will provide guidance to help individuals making an application.

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## Section I – How will the changes affect other Approved Regulators

465. We have met regularly with the Bar Standards Board (BSB) and with CILEx Regulation throughout the development of the SQE.
466. As we said in our first application, whilst recognising that we are separate bodies with different stakeholders, we have talked extensively with the BSB about how our approaches align. We both started our educational reform programmes by developing statements of professional competence. The BSB has mapped our Statement of Solicitor Competence against their Professional Statement. This shows how closely the BSB Professional Statement and the SRA Competence Statement match. Both our educational reform programmes also have the same aims:
- greater flexibility in pathways
  - less reliance on specification of inputs
  - a greater focus on end-point standards.
467. Pre-qualification, our respective approaches will make it easier for universities to design courses which work for both career paths. Both of our approaches involve greater flexibility in pathways and an element of centralised assessment.
468. Any courses which prepare students for SQE1 will also meet the requirements for the academic component for barristers. Any courses which are designed to cover the academic component for barristers would help prepare students for SQE1 (if they decided that they wanted to qualify as a solicitor rather than a barrister) but they would probably need a top-up course for SQE1 as SQE1 covers not just the content of the current QLD but also the legal knowledge aspects of the LPC.
469. The BSB has confirmed that there is nothing in their rules which would prevent one of their Authorised Education and Training Organisations (AETOs) from developing courses to help bar students prepare for SQE1 should they decide to qualify as a solicitor rather than a barrister. We are also aware that some providers plan to continue to run a GDL-style course for non-law graduates which will cover the BSB's requirements for the academic component of training as well as offer preparation for SQE1.
470. Both CILEx Fellows and qualified barristers will continue to be able to qualify as solicitors through taking SQE1 and SQE2, where there are additional elements in them over and above their existing qualification. We will take the same approach with the other approved regulators.

471. We propose that exemptions from SQE1 will be based on whether qualified lawyers have demonstrated that they have covered the functioning legal knowledge equivalent to the SQE1 FLK assessments. SQE2 will be based on an assessment of whether qualified lawyers have equivalent practice rights and have developed equivalent skills to those we require of solicitors. Qualified lawyers will only be granted an exemption where their prior knowledge and/or experience is equivalent to the whole of one of the SQE1 FLK assessments or the whole of the SQE2 uniform assessment or both.
472. We have not yet done this mapping work. But we have spoken with both the BSB and CILEx Regulation about the final SQE design and our approach and we will work closely with them later this year to start this process.
473. It is possible that, subject to detailed mapping and discussion with CILEx Regulation, CILEx Fellows will have to take the whole of SQE1 and SQE2. This is because CILEx Fellows have qualifications in particular practice areas and because they do not have the same practice rights as solicitors. It is possible in theory that some may acquire CILEx qualifications across all the areas of the SQE. But CILEx Regulation tell us that in practice this does not happen. Under the current system, CILEx Fellows do not get exemption from the academic requirements for qualification as a solicitor. But they are exempt from the requirement to take a period of recognised training. It is likely that CILEx Fellows will be able to meet the requirements for QWE through the work experience they complete to become a Fellow, provided that experience gave them the opportunity to develop the competences in the Competence Statement and could be signed off by a solicitor. The benefit of the SQE for CILEx Fellows is that, unlike the current system where they have to pay for the LPC, which can be expensive and which lasts a year full time, they will not be required to take a prescribed course to prepare for SQE. They will be able to use the learning and experience from their CILEx qualification to prepare for SQE and may only need to take a shorter, more focused top-up course.
474. It is also possible, subject to detailed mapping and discussion with the BSB, that barristers will have to take the whole of SQE1 and SQE2. This is because barristers also have limited automatic practice rights<sup>68</sup>. And because their academic component of training will cover some, but not all, of the knowledge required to pass SQE1. As stated, providers will be able to offer a top-up course for anyone wishing to qualify as a solicitor.
475. It is not possible to grant partial exemptions from any of the SQE assessments. This is because each assessment is designed with the number of questions/tasks to produce a reliable and precise pass/fail point. A reduction in the number of questions/tasks will reduce the reliability of pass/fail decisions to an unacceptable level for a high stakes licensing exam. We would not be sufficiently confident that those that pass on the basis of a reduced number of questions/tasks deserve to pass. Compromising the reliability of the assessments would run contrary to our objective of providing a consistent and fair assessment for all candidates,

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<sup>68</sup> But it is possible for barristers to apply for additional practice rights.

regardless of their prior learning or background. There is a strong argument for applying a consistent approach for all candidates.

- 476. There are no impacts on other approved regulators arising from our proposals to amend the Principles for Qualified Lawyers.
- 477. There are no impacts on other approved regulators arising from our proposals in the SQE Assessment Regulations. These assessment rules will apply to anyone taking the SQE, both qualified lawyers and non-qualified lawyers.

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## Section J – What are our key milestones?

478. The key milestones for implementation are set out in the table below. They are based on a target implementation date of 1 September 2021.

Activity	Target date
Resources on QWE updated	July 2020, then every quarter going forward
Mapping of other qualifications begins	August 2020
Procurement process for SQE evaluation consultant begins	October 2020
Release 1 of SQE web content update	December 2020
Release 2 of SQE web content update	April 2021
SQE applications for exemptions from qualified lawyers open	March 2021
SQE Regulations and SQE Assessment Regulations come into force	1 September 2021
Booking opens for 1 <sup>st</sup> SQE1 assessment	September 2021
1 <sup>st</sup> SQE1 assessment	November 2021
Booking opens for 1 <sup>st</sup> SQE2 assessment	February 2022
1 <sup>st</sup> SQE2 assessment	April 2022

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## **Section K – SRA contact for matters relating to the application**

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## **Section L – Annexes**

Annex 1: SQE Assessment Regulations

Annex 2: Amended Principles for Qualified Lawyers

Annex 3: Amended Authorisation of Individuals Regulations

Annex 4: EDI Risk Assessment

Annex 5: SQE1 Assessment Specification

Annex 6: Summary of statistical and psychometric methods used on the SQE

Annex 7: SQE2 Assessment Specification

Annex 8: List of training provision

Annex 9: Bridge Group report