



The Law Society

The SRA consultation - A new route to qualification: New regulations

The Law Society's response

July 2017



A new route to qualification: New regulations -

A response from the Law Society of England and Wales

Introduction

The following response contains a summary of the comments of the Law Society (the Society) on the Solicitors Regulation Authority's (SRA) proposed Solicitors Qualifying Examination (SQE) regulations. At this stage, the Society is looking for more detail in order to assess their likely outcome. Based on the limited information available, the Society has focused on two strategic objectives:

- **Maintenance of high standards:** It is important that the requirements set by the SRA continue to ensure the highest levels of challenge and rigour for those entering the profession. The SQE must maintain the strong international reputation of those qualifying in England and Wales in the interest of clients, the profession, students and other stakeholders. This is why we continue to emphasise the importance of ensuring not only that the new tests are developed appropriately, but also that the academic and work experience requirements maintain their credibility by means of appropriate checks and safeguards.
- **Ensuring a diverse profession:** The new system must ensure that the broadest range of applicants can qualify as solicitors, and that there are no barriers excluding candidates from non-traditional backgrounds. In this context, it is important that the new requirements are communicated clearly, simply and widely.

In addition, we would highlight that there is uncertainty as to the impact of SQE among employers, teaching institutions and potential students. For example, educational institutes could face difficulties planning for courses and student numbers. Students may also be deterred from applying to join LLB courses whilst there is a lack of clarity regarding what future career paths may look like. We encourage the SRA to continue to communicate to the fullest extent possible with the institutions and groups affected, in order to minimise uncertainty. Furthermore, from the international perspective, the mutual recognition of lawyers' qualifications is a key issue but it is uncertain how this regime will operate after Brexit. We believe it is necessary to avoid making changes which could make mutual recognition of a solicitor's title more difficult after Brexit.

To determine whether or not the proposed system will support the regulatory objectives we believe more detail will be required. Consultees would benefit from more information on how these rules will be applied in order to scrutinise them in the

required detail. The SRA should not be asking for approval of regulations until such time as it has set out the details of the new system in a way which can be properly assessed by stakeholders. We would therefore encourage the SRA to reflect on its proposals further to provide this extra detail, since even minor changes to current arrangements could have a major impact.

We also believe that for a consultation to be truly 'effective and meaningful' - as the SRA guidance on regulation intends for it to be¹ and section 28 of the Legal Services Act requires - respondents must be able to examine any proposed changes to regulations in detail.

As this consultation has insufficient detail we do not believe that it is adequate for the task of determining stakeholders' points of view. To ensure that the consultation is 'open and effective'² we believe it will be necessary to arrange a further consultation, once the SRA's updated regulations are available for stakeholders to properly consider.

Question 1 - draft regulations

Do you agree that these regulations implement the agreed policy framework for the SQE?

The draft regulations set out four requirements that must be met before an individual can be eligible to qualify:

- 1.1 (a) you have satisfactorily passed an assessment which is designed to assess your competence against the prescribed competences for solicitors and is conducted by an assessment organisation appointed by the SRA for that purpose;
- (b) you hold a degree or qualifications or experience which the SRA is satisfied are equivalent to a degree;
- (c) you have completed qualifying work experience which meets the requirements of regulation 2; and
- (d) the SRA is satisfied as to your character and suitability to be a solicitor.

As currently drafted the regulations grant the SRA substantial discretion over interpretation and implementation, which we believe would not be in the interests of the public or other stakeholders. For example, they imply that the SRA has broad discretion to dispense with all academic qualifications for applicants because of their experience, in place of the narrow discretion that exists under the current scheme.

¹ <http://www.sra.org.uk/sra/consultations/consultation-approach.page>

² <http://www.sra.org.uk/sra/consultations/consultation-approach.page>

The regulations under question 1 should not be adopted until the SRA sets out in more detail how they are intended to work. Please see below for further specific comments.

Work Experience

We believe that work experience is a crucial element of the SQE and are concerned that the requirements of Regulation 2.2 are not rigorous enough to guarantee a consistent and high standard.

Regulation 2.2 states:

You must arrange for confirmation in the prescribed form of the period of work experience carried out and that it provided you with the opportunity to develop some or all of the prescribed competences for solicitors, to be given by:

- (a) the organisation's COLP;
- (b) a solicitor working within the organisation; or
- (c) if neither (a) or (b) are applicable, a solicitor.

The wording of Regulation 2.2 requires amendment. Simply confirming that the candidate has had the 'opportunity' to develop skills is insufficient. The solicitor should also be required to confirm that the work undertaken by the candidate has been rigorous enough to prepare the candidate for a career as a solicitor. In addition, the solicitor should confirm that the candidate has carried out work that is sufficiently wide ranging and that it has been competently performed.

Regulation 2.2(c) indicates that confirmation could be provided by entities that have neither a COLP nor a qualified solicitor working within them. We would highlight our strong concerns about such an eventuality, and what this might mean for the level of oversight that candidates are receiving during their work experience. The absence of any input from the profession in training could undermine the relevance of such experience. In addition, it puts the solicitor who is expected to provide confirmation in a difficult position, as they are being asked to provide confirmation about a period of work experience that they may know little about. If work experience is to take place in an institution which has neither a COLP nor a solicitor then the SRA should have to specifically authorise the institution as a training provider.

Furthermore, it is important to gain clarity over the definition of 'solicitor' in the regulations above. For example, are these solicitors to hold current practising certificates, would they just need to have their names on the roll, or have a minimum level of post-qualification experience?

We are concerned that these aspects of the proposals seriously undermine, rather than improve, the objective of the development and maintenance of high and consistent standards across the whole profession.

The new system presents a good opportunity for the SRA to take steps to issue clear guidance to solicitors on meaningful work experience (and enable the profession to apply a common and consistent standard). It is also important to stress that the right balance should be reached between prescriptive and generic guidance, and that the bar on this issue is not set too low.

If the work experience requirements are *not* made more stringent, in accordance with the suggestions above, then two risks will emerge.

The first of these relates to standards. There will be a great deal of flexibility given to candidates about what form the offered work experience takes. This could lead to some candidates having to take on low-quality work experience which is poorly supervised, with a consequent knock-on impact for professional standards and for clients.

Secondly, a social mobility risk arises from such a broad definition of work experience. Some law firms may not be satisfied with a base-level of work experience, and they may expect something more stretching. There is a high probability that candidates with already established links into the legal sector will be better placed to judge what work experience will meet the needs of employers, and make sure that they obtain it.

The SRA must also ensure that the new regime does not have a negative impact on encouraging a diverse range of applicants into the profession. The lack of clarity pertaining to the costs and funding of the SQE still remains and we would encourage the SRA to undertake a full equality impact assessment to determine the impact of the regulations and subsequent tests.

Question 2

Do you have any comments on the proposals for recognition of the knowledge and competences of qualified lawyers?

The current arrangements have supported the growth of networks established by English and Welsh firms across the world, and firms from the EU and other jurisdictions to open and practise in, and via, England and Wales. This has helped to create one of the biggest and most diverse legal communities in Europe.

We welcome the fact that the SRA is looking at recognition of qualified lawyers at this early stage, as it is helpful to give an indication to our international partners that we take mutual recognition very seriously and (given Brexit) this is a very important issue for all sides to get right. However, we would stress that further engagement with the profession on the points below will be needed once the outcome of the Brexit negotiations becomes clearer, and early planning for possible post-Brexit scenarios is to be encouraged.

Recognition and Exemptions

The SRA has stated that if a foreign-qualified lawyer can demonstrate that they have the knowledge and/or skills required for the SQE and are satisfied that the foreign lawyer has the qualifications or experience to demonstrate some or all of the prescribed competences, they may be prepared to grant exemptions from parts of the SQE.

There is an excessive degree of uncertainty and subjectivity in the current draft principles. We would request specific and detailed clarification from the SRA as to what criteria would be applied for the recognition and assessment of a foreign jurisdiction, and confirmation of whether (and to what degree) this would constitute a change from current procedures.

We would support the continuation of any existing exemptions pertaining to EEA and Swiss nationals qualified in the EEA or Switzerland, applied through submission of the exemption application form³ (as long as there are no material changes which would warrant a change of the assessment). This point is particularly relevant where there is a common heritage and close ties between two jurisdictions, for example between England and Wales and the Republic of Ireland. (Many City firms are also keen on increasing ties to Ireland as several of our members have sought admission there to ensure that they are still allowed to address EU courts after Brexit).

We would also be in favour of exempting foreign lawyers with two years' professional experience from SQE 2. This would enable the new system to continue meeting part of the reciprocity requirements set out in the re-qualification framework. (It would also serve to highlight the wider issue that a lack of early clarity or flexibility in the delivery of these regulations may lead to reciprocal steps being taken against our members working abroad).

Brexit

As highlighted above, any SQE regulatory changes must fully take into account the progress and outcome of Brexit negotiations and, ultimately, the nature of the new

³ <http://www.sra.org.uk/solicitors/qlts/apply.page>

relationship between the UK and the EU, as well as any transitional implementation arrangements. It is likely that some proposals will have to be reconsidered after the outcome of the Brexit negotiations is known. Under the current regime, Registered European Lawyers can re-qualify on the evidence of three years of regular and effective practice of home state law, including EU law, after establishment and registration in England and Wales. The Law Society is supportive of the continuation of this EU lawyers' framework which has proved very successful.⁴

Administrative fees

The consultation states that the SRA is considering implementing an 'administrative fee' for qualified lawyers who apply for admission. Early and clear certainty on the new fee regime would be welcome (for example under what criteria would it be set, reviewed, and changed).

Standard of English

We believe that relevant solicitors should be tested at the point of qualification and against clear and recognised standards.

⁴ Further Information on the Law Society's work on Brexit can be found here: <http://www.lawsociety.org.uk/support-services/brexit-and-the-legal-sector/>