



The Law
Society

Changes to the Principles for Qualified Lawyers -

SRA consultation

Junior Lawyers Division

May 2020

Changes to the Principles for Qualified Lawyers: Consultation

A response from the Junior Lawyers Division of the Law Society of England and Wales 6 May 2020

Introduction

The Junior Lawyers Division (JLD) is a division of the Law Society of England and Wales with an independent representative voice. The JLD is one of the largest communities within the Law Society with over 70,000 members. Membership of the JLD is free and automatic for those within its membership group including Legal Practice Course (LPC) students, LPC graduates, trainee solicitors, solicitor apprentices and solicitors up to five years qualified.

The JLD welcomes the opportunity to comment on the SRA's recently revised proposals for the Solicitor's Qualifying Exam (SQE) concerning principles for qualified lawyers seeking admission to the jurisdiction. The JLD has had the opportunity to read the Law Society's response and is broadly in agreement.

Generally, the JLD agrees with the SRA's overall aim to ensure that qualified lawyers who want to be admitted as a solicitor in England and Wales have sufficient professional experience and/or qualifications to equip them with the necessary skills to practice as a solicitor. However, the JLD wishes to outline some issues which are of particular concern to its members, including those qualified lawyers seeking admission who are likely to fall within the JLD's future membership.

Questions

1. Do you agree with our proposal to remove the requirement for qualified lawyers seeking an exemption from the SQE to be from a jurisdiction we recognise?

The JLD supports the removal of the requirement for qualified lawyers seeking an exemption from the SQE to be from a recognised jurisdiction and agrees that the professional experience or qualification of a qualified lawyer must be of an equivalent standard to the SQE. The JLD also agrees that the previous requirement is an unnecessary barrier to admission.

It is important that qualified lawyers from all countries, irrespective of whether the jurisdiction is recognised, have the opportunity to cross-qualify to ensure that England and Wales remain the jurisdiction of choice for legal services. The proposals will help improve competition and the provision of legal services by enabling the best legal talent from diverse backgrounds to enter the market. They also propagate the general aim of the SQE to further open access to the profession. However careful analysis of the qualification and experience obtained must be carried out against the content and standard of the SQE (as per paragraph 12 of the consultation).

Paragraph 13 of the consultation states:

“This emphasis on the qualification and experience means that we do not need separately to assess the particular features of the jurisdiction in which the qualification was obtained or in which the lawyer has been practising. Recognising the jurisdiction itself is not therefore a necessary part of the process.”

It is noted that paragraph 8 of the initial impact assessment does not expand on this point and the JLD would welcome further clarification on the basis that proper analysis of qualifications and experience would necessarily involve consideration of jurisdictional features to some degree.

Nonetheless, a clear and strenuous process must still be adopted by the SRA when assessing individual circumstances and the JLD is concerned that the burden of this approach will lie with the qualified lawyers, rather than the SRA.

The notes to the Annex 3 Principles (paragraphs 7-9) do provide for regulatory/professional bodies to make applications for recognition of a professional title by way of undertaking a mapping exercise and submitting evidence demonstrating how their members' professional qualification is equivalent to the SQE. As noted by the Law Society, this will not only protect standards and public interest, but it will also ensure that those seeking to qualify from a non-recognised jurisdiction have a full understanding of what is required to practice in England and Wales.

However, individuals from overseas jurisdictions which have not previously been recognised and those who do not have the support of a regulatory/professional body behind them will have to apply separately under paragraphs 10-12 of the notes to the Annex 3 Principles. This may, contrary to paragraph 10 of the initial impact assessment, have a detrimental or disproportionate impact on qualified lawyers from certain jurisdictions who must field their own applications (and presumably the associated costs). It is also contended that such a case-by-case assessment could go against the whole objective of having one universal qualification assessment.

The JLD welcomes further information on how qualifications will be recognised on an individual basis before it can comment further.

2. Do you agree with our proposal to amend the principles to add a Welsh language test requirement so qualified lawyers have the option to demonstrate their language competence in either English or Welsh?

The JLD agrees that the principles should be amended to rid the inconsistency described in paragraph 15 of the proposal by failing to mention Welsh as a language requirement despite Regulation 6.2(b) of the SRA Authorisation of Individuals Regulations providing 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.

We support the resolution of the potential disadvantage highlighted in paragraph 12 of the initial impact assessment.

To this end, the JLD would echo the Law Society's comments that this consultation should serve as a reminder of the importance of the Welsh language within the jurisdiction and further

encourage the SRA to commit to offering the SQE assessments in Welsh so as to not disadvantage those qualifying domestically.

The JLD represents junior lawyers across both England and Wales and not incorporating a domestic equivalent would see a large percentage of our members being unfairly prejudiced against. The JLD has already engaged on this topic through our letter to the Welsh Language Commissioner on 8 November 2019 following the SRA's decision not to offer SQE assessments in Welsh. The JLD welcomes the necessary amendments to ensure consistency between the principles and SQE admission regulations for both domestic and international candidates alike.

3. Do you agree with our proposal to amend the principles to extend to qualified lawyers exempt from parts of SQE2?

The JLD supports the extension of the language requirement to qualified lawyers who are exempt from parts of SQE2 (as well as the whole of it, as originally drafted) where the SRA has serious and concrete doubts about their language knowledge. The JLD considers that a high level of proficiency in written and spoken English or Welsh is important to meet the standard of language necessary to provide competent legal services and to maintain public confidence and trust in the legal system.

The JLD agrees that the proposed amendment is proportionate in line with the principles of Better Regulations (paragraph 29 of the initial impact assessment), yet the SRA's proposals on how to mitigate the risks uncovers some points for clarification.

Paragraph 18 of the initial impact assessment states:

"We have taken appropriate and proportionate steps to mitigate this risk by:

- a) Only applying the requirements where we have serious and concrete doubt about the applicant's language knowledge in English or Welsh.*
- b) Targeting the requirements at those elements of English or Welsh knowledge which they have not been able to demonstrate through taking relevant elements of the SQE2.*
- c) Developing flexible guidance (annex 1) against which an applicant can demonstrate English or Welsh language knowledge if required."*

Paragraph 16 of the initial impact assessment states that the SRA will

"have serious and concrete doubts about English or Welsh language knowledge of an applicant for a first practising certificate if they have not taken any part of the SQE or if they have taken parts of the SQE and in doing so have not demonstrated their knowledge in all the four elements of English or Welsh language knowledge".

This suggests that the SRA will have serious doubts in respect of all internationally qualified lawyers unless they take the SQE and the JLD would welcome further clarification of this point.

The JLD agrees with the proposed objective that a qualified lawyer who is exempt from part of SQE2 may not have demonstrated all four elements of language knowledge (listening, speaking, reading and writing) and would like to take this opportunity to reiterate our previous concerns that multiple choice questions alone cannot fully demonstrate a candidate's proficiency in English or Welsh.

The JLD agrees that the flexible criteria in Annex 1 will facilitate greater diversity within the profession and will not pose a significant or disproportionate barrier to admission for qualified lawyers given that it may only affect a minority of candidates (as suggested in paragraphs 21-22 of the initial impact assessment).

However when read alongside paragraph 6 of the Annex 3 Principles, there may be a disproportionate cost for qualified lawyers if the language requirement is imposed post-admission. Language ability should be assessed before admission to not protract the process unnecessarily.

The JLD awaits further guidance outlining how language knowledge can be evidenced, as suggested by paragraph 23 of the initial impact assessment, before providing any further comments.

4. Do you agree with our proposed approach to demonstrating English or Welsh language competence and proposal to remove the word “test” from our principles accordingly?

The JLD supports the removal of the word “test” from the language requirement section on the basis that it is unnecessary from a linguistic perspective. The JLD agrees that the wide range of flexible approaches may assist in opening the profession to more candidates, but caution must be taken to ensure that a consistent approach is taken.

5. Do you have any further information on our proposals or how we propose to implement them to inform our impact assessment?

The JLD will comment further when the final impact assessment and consultation response becomes available in summer 2020.

In the meantime, the JLD raise some further points in relation to exemptions from the SQE. In our response of July 2017 to the SRA's consultation on new regulations, the JLD highlighted the concern of allowing exemptions to a minimum of two years' qualifying work experience. We maintain that everyone applying to be admitted as a solicitor in England and Wales must have a minimum of two years' qualifying work experience.

We also maintain that the starting point should be that anyone to be admitted as a solicitor in England and Wales following implementation must have passed SQE (subject to those who have already commenced on the 'traditional' route to qualification and qualify prior to the longstop date). We understand that the SRA does not consider that there can be an exemption from SQE1 (to test the knowledge of the law of England and Wales, including professional conduct and ethics) and will only be considering exemptions from SQE2. We note previously that the SRA had considered that there could not be partial exemption from SQE2, but has since changed its position. We would welcome further information on how the candidate will

be assessed in SQE2 if a partial exemption is granted and how an overall pass/fail will be evaluated, incorporating exemptions, and awarded for SQE2.

We stress again the importance of evidence for all candidates applying for an exemption from SQE2. The SRA must carefully consider this evidence before allowing a candidate an exemption from parts or the whole of SQE2. We also maintain that if a candidate is to be granted an exemption from the whole of SQE2, then the SRA must be confident that the candidate has provided reliable and strong evidence of competence in every skill under SQE2. We would suggest that any candidate who is granted an exemption from the whole of SQE2, should initially be presumed to need to demonstrate the language requirement.

**Junior Lawyers Division
May 2020**

The views expressed in this consultation response are those of the Junior Lawyers Division and do not necessarily reflect the view of the Law Society of England and Wales or any other organisation unless stated.