

Consultation

Exemptions for qualified lawyers from outside the UK from the Qualified Lawyers Transfer Scheme in the event of a no-deal Brexit

December 2018

Contents

About this consultation	3
How to respond	3
This consultation is open from 7 December 2018 until 10 January 2019.....	3
Online questionnaire.....	3
Reasonable adjustment requests and questions.....	3
Publishing responses.....	3
What are we consulting on	4
Discussion.....	5
Consultation options and questions.....	6
Changes to regulations.....	8
Next steps.....	9

About this consultation

This consultation seeks views on our recommended approach in relation to qualified lawyers from outside the UK in the event of a no-deal Brexit.

We are also seeking views on our approach to part-qualified EU candidates in the event of a no-deal Brexit.

How to respond

This consultation is open from 7 December 2018 until 10 January 2019.

Online questionnaire

Our online consultation questionnaire is a convenient, flexible way to respond. You can save a partial response online and complete it later. You can download a copy of your response before you submit it.

[Start your online response now](#)

Reasonable adjustment requests and questions

We offer reasonable adjustments. [Read our policy to find out more.](#)

[Contact us](#) if you need to respond to this consultation using a different format or if you have any questions about the consultation.

Publishing responses

We will publish and attribute your response unless you request otherwise.

What are we consulting on

- 1 Current European Union (EU) legislation, implemented by UK Regulations, mean there is an aptitude test to check the competence of EU lawyers applying for admission as a solicitor of England and Wales.¹ They also require that EU lawyers should be entitled to 'exemptions' from the test, where they can demonstrate equivalent qualifications or experience.
- 2 Our test is the Qualified Lawyers Transfer Scheme (QLTS), which we offer to all foreign qualified lawyers. In appropriate cases, we give exemptions from the QLTS to EU lawyers, but not to lawyers from any non-EU jurisdictions.
- 3 If the UK leaves the EU with no special trade arrangements (a no-deal Brexit), World Trade Organisation (WTO) rules, which do not permit preferential treatment for nationals of different states, will apply to our arrangements for recognising non-UK qualified lawyers. This is the so called most favoured nation rule. It means all countries must be treated the same way as the most favoured nation.²
- 4 The Government has made clear in its Technical Notice (published October 2018), that in the case of a no-deal Brexit, UK Regulations implementing various Directives, including the Mutual Recognition of Professional Qualifications Regulations, will be repealed or amended to meet WTO obligations.³ Individuals who have applied for a recognition decision and are awaiting a decision on exit day will be able to finish their application in line with existing arrangements. Those who have not started an application will not be able to apply under the existing arrangements.⁴
- 5 In the case of a no-deal Brexit, we would need to change aspects of both the current QLTS Regulations 2011 and, when in force, the Authorisation of Individuals Regulations⁵ to remove preferential treatment for EU lawyers.
- 6 The Government has made clear that a no-deal Brexit is not the favoured approach and not the most likely basis upon which the UK will leave the EU. However, we need to be prepared for that possibility, and be prepared to

¹ The Mutual Recognition of Professional Qualifications Directive (Directive 2005/36/EC as amended by Directive 2013/55/EU) implemented in the UK by the European Union (Recognition of Professional Qualifications) Regulations 2015 (MRPQ Regulations).

² Note that there are exemptions from this principle in the case of trade deals etc.

³ Providing services including those of a qualified professional if there's no Brexit deal, Ministry of Justice, 12 October 2018.

⁴ The consultation addresses specifically the position on a no-deal Brexit. The position in the event of a temporary or permanent agreement on trade will depend on what that agreement is.

⁵ The Authorisation of Individual Regulations will replace the QLTS Regulations in 2019.

make sure we are compliant with WTO rules, should they apply from 30 March 2019.

- 7 This consultation seeks views on our recommended approach in relation to qualified lawyers from outside the UK, in the event of a no-deal Brexit. This is to permit all such candidates to apply for exemptions, from the whole of the multiple choice test or the whole of the objective structured clinical examination components of the QLTS, or both. We are not proposing making any changes to the current position for UK qualified lawyers.
- 8 We are also seeking views on our approach to part-qualified EU candidates in the event of a no-deal Brexit.

Discussion

What is the current position on QLTS exemptions?

- 9 EU lawyers⁶, Scotland and Northern Ireland lawyers and English and Welsh barristers are entitled to exemptions from the QLTS, or individual questions from it. This is when they can demonstrate they have qualifications or experience which demonstrates knowledge of English and Welsh law and practice, as set out in the “Day One Outcomes”, which the QLTS assesses.
- 10 The QLTS is divided into two parts: a multiple choice test (which tests legal knowledge) and the objective structured clinical examination (which tests both skills and legal knowledge).
- 11 We map our requirements against those of the candidate, based on the generic qualifications from their practising jurisdiction, and any personal qualifications and experience. We identify the subject areas of any equivalence and give a candidate exemption from any questions in the QLTS on those subjects.
- 12 In order to give us greater assurance of the consistency of the assessment for all candidates, we will be taking a different approach for the Solicitors Qualifying Examination (SQE). As explained below, SQE candidates who are qualified lawyers can be exempted (where appropriate) from a whole, standalone assessment. But we will not permit exemptions from individual questions within an assessment.

The position of Irish solicitors

- 13 The generic qualifications of solicitors of the Republic of Ireland have been mapped against the Day One Outcomes. This shows there is equivalence in

⁶ Strictly speaking, the position covers lawyers who are nationals of: the EU, the EEA and Swiss Qualified Lawyers.

all subjects except for land law. Irish solicitors therefore only need to take land law questions in the QLTS.

- 14 As an alternative, we permit Irish solicitors to take an English land law assessment run by the Law Society of Ireland. An Irish solicitor with this English land law qualification is then entitled to exemption from the whole of the QLTS, and to apply for admission as an English solicitor with no further aptitude test. The overwhelming majority take this option.
- 15 English and Welsh solicitors are entitled to admission as solicitors of the Irish Republic, without any aptitude test. Historically, very few applied. But since the announcement of the EU referendum result in 2016, large numbers of English and Welsh solicitors have qualified as Irish solicitors in order to preserve EU practice rights.
- 16 The Law Society of Ireland tell us that the legislative position in Ireland is that recognition is based on reciprocity. The implication of this is that, should EU arrangements fall away, then on the basis of current arrangements, the Law Society of Ireland may introduce a requirement for English solicitors to take a test in Irish land law.

What is the future position under the SQE?

- 17 The SQE is due to be introduced from Autumn 2021 and it will replace the QLTS.⁷
- 18 Under the SQE, qualified lawyers from all jurisdictions will be entitled to apply for exemptions from the SQE where they can demonstrate that their qualifications and experience are equivalent in content and standard.⁸ We have taken this position because it is fair, open and treats all jurisdictions equally. It is a proportionate way to protect standards.
- 19 As we have stated above, qualified candidates will be entitled to exemptions only where they can demonstrate that their existing qualifications and experience is equivalent to the whole of a component part of the SQE ie a whole assessment. This gives us a high degree of assurance that they are assessed on a consistent and comparable basis.

Consultation options and questions

What are the options for the QLTS for all non-UK lawyers in the event of a no-deal Brexit?

⁷ Under our transition proposals, the QLTS will run for 12 months after the SQE has come into force. It will therefore cease altogether in September 2022.

⁸ Insert hyperlink to SQE regulations and principles.

A. To permit no exemptions from the QLTS

20 This is demonstrably consistent. It meets the WTO requirement not to give preferential treatment to the nationals of some states.

21 However, to permit no exemptions from the QLTS:

- would remove the exemptions currently available to EU lawyers
- may be disproportionate, as arguably in the case of Irish solicitors, where there is equivalence except for land law
- would run counter to the approach we will be taking shortly, when the SQE replaces the QLTS.

B. To permit candidates from all non-UK jurisdictions to apply for exemptions, but only from the whole of either the multiple choice test or the objective structured clinical examination or both

22 This is our preferred option. It would extend the current QLTS position to candidates from all non-UK jurisdictions, not just those from the EU. This would meet the WTO requirement not to give preferential treatment to the nationals of some states.

23 To enhance the consistency of assessment, and reflect the SQE position, we recommend only candidates who can demonstrate that their existing qualification and experience is equivalent to the whole of a component part of the QLTS should be exempt. This could be either the multiple choice test or the objective structured clinical examination or both.

24 We think there is a strong argument that any disproportionality in requiring candidates, where there is near-equivalence, to take the whole of the multiple choice test or the objective structured clinical examination is justified (by the objective of consistency and fairness in assessment).

25 We would continue to accept any additional qualifications which a candidate may rely on to demonstrate equivalence – such as the land law exam run by the Law Society of Ireland. This approach would preserve the current position for solicitors qualified in the Republic of Ireland.

Question 1: Do you agree that, in the event of a no-deal Brexit, we amend the QLTS regulations with effect from EU exit day:

(a) So as to entitle all non-UK qualified lawyers who are seeking admission as an English solicitor to exemptions from the QLTS, where they can demonstrate equivalent qualifications or experience to the Day One Outcomes; provided that

(b) These exemptions may only be granted from the whole of the multiple choice test or objective structured clinical examination or both.

Question 2: Are there any potential impacts arising from these recommendations that we have not already identified?

Part qualified EU (Morgenbesser) candidates

- 26 Currently, we assess EU nationals who seek to qualify under the principle established in Case C-313/01 *Morgenbesser v Consiglio dell'Ordine degli avvocati di Genova* (13 November 2003). Under this principle an EU, EEA or Swiss national who is partially qualified in another EU/EEA Member State may apply to us to recognise the knowledge and skills they have acquired in achieving partial qualification. We will then assess what further education and training they need to meet our requirements for qualification.
- 27 We assess Morgenbesser candidates under provisions in our training regulations⁹ which permit us to admit non-qualified candidates who have completed any of our current education and training requirements by equivalent means¹⁰. We propose to apply this to all candidates, both EU and non-EU. This will comply with WTO rules.
- 28 We originally proposed in our new Authorisation of Individual regulations that there would be a specific provision entitling an individual who was a part-qualified legal professional under the rules of an EU member state (other than the UK) to apply for exemptions from the SQE¹¹. In the event of a no-deal Brexit we will remove this provision.

Question 3: Do you agree with our approach to *Morgenbesser* candidates under the current training regulations?

Question 4: In relation to the new Authorisation of Individual regulations, do you agree with our approach to *Morgenbesser* candidates?

Changes to regulations

- 29 We are not proposing making any changes to the current position of UK qualified lawyers. But our recommended position on QLTS exemptions for qualified lawyers from outside the UK will require the QLTS regulations to be amended, as follows:

⁹ SRA Training Regulations 2014 - Qualification and Provider Regulations, Regulation 2.2

¹⁰ *SRA Training Regulations 2014 - Qualification and Provider Regulations, clause 2.2*

¹¹ Draft SRA Authorisation of Individuals Regulations, clause 3.3

“We may grant you an exemption from such of either those QLTS assessments which together comprise the multiple choice test, or those QLTS assessments which together form the objective structured clinical examination, or both, as we consider appropriate based upon your qualifications and experience.”

- 30 The amended rules (subject to consultation views) and any other consequential amendments would be made, as necessary. We would also amend the guidance to the existing Handbook to reflect these changes in position, particularly that relating to *Morgenbesser* applications. No changes to current regulations are required to give effect to the changed position in relation to *Morgenbesser* applications.

Question 5: Do you agree that this wording gives effect to the recommended approach?

Next steps

- 31 Subject to this consultation, we intend to seek our Board and Legal Services Board approval of the proposed new regulations - on the basis that they will come into force on 30 March 2019, in the event of a no-deal Brexit. If a Withdrawal Agreement is reached which means the UK is not trading on WTO rules, the new regulations will not be brought into force.
- 32 We will make any necessary amendments to the SQE regulations to reflect our approach in relation to *Morgenbesser* candidates when we apply to LSB for final approval of the introduction of the SQE.