



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

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Consultation response

March 2019

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

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## Our response to consultation

### Summary

1. We propose to introduce changes to our regulations, in the event of a no-deal Brexit, to allow us to:
  - entitle all lawyers from outside the UK who are seeking admission as a solicitor of England and Wales to apply for exemptions from the Qualified Lawyers Transfer Scheme (QLTS) where they can demonstrate equivalent qualifications or experience to the Day One Outcomes. These exemptions may only be granted from the whole of the Multiple Choice Test or Objective Structured Clinical Examination or both.
  - Remove the provision in our new Authorisation of Individual Regulations that would entitle an individual who was part-qualified under the rules of an EU member state (other than the UK) to apply for exemptions from the SQE.
2. In the event of a no deal Brexit, these changes will come into effect on 30 March 2019. If a withdrawal agreement is reached, these changes will not be brought into force.

### Background

3. Under current European Union (EU) legislation, implemented by UK Regulations, there is an aptitude test to check the competence of EU lawyers applying for admission as a solicitor of England and Wales.<sup>1</sup> This also requires that EU lawyers should be entitled to exemptions from the test, where they can demonstrate equivalent qualifications or experience.
4. Our test is the Qualified Lawyers Transfer Scheme (QLTS), which we offer to all foreign qualified lawyers. In appropriate cases, we currently give exemptions from the QLTS to EU lawyers, but not to lawyers from non-EU jurisdictions.
5. Further, under the principles derived from *Case C-313/01 Morgenbesser v Consiglio dell'Ordine degli avvocati di Genova* (13 November 2003), any EU, EEA or Swiss national who is partially qualified in another EU/EEA Member State may apply to us for recognition of the knowledge and skills they have acquired in achieving partial qualification. We do this using our power to admit candidates who have completed any of our education and training

requirements by “equivalent means” to assess what if any further education and training they need to meet our requirements for qualification.

6. We have introduced equivalent provisions in our new arrangements for the Solicitors Qualifying Examination (SQE), to reflect the position above for individuals with partial EU legal qualifications. However, for qualified lawyers, those from all jurisdictions will be entitled on an equal basis to apply for exemptions from the SQE, on the basis of the content and standard of their qualifications and experience.
7. When we consulted, we said that we wanted to amend our approach to recognition of qualified lawyers in the event of a no-deal Brexit to ensure that we were compliant with World Trade Organisation (WTO) rules, which do not permit preferential treatment for nationals of different states. This is the so called most favoured nation rule. It means all countries must be treated the same way as the most favoured nation.
8. Although a no-deal Brexit is not the UK Government’s favoured approach, we need to make changes to our arrangements to ensure that, in the event of a no-deal Brexit, we are compliant with the amended MRPQ by 30 March 2019. We would therefore need to make changes to our QLTS arrangements 2011. If a withdrawal agreement is reached, appropriate regulations reflecting the deal will be brought into force.

### **Consultation proposals**

9. In a consultation open from 7 December 2018 until 10 January 2019, we proposed that, in the event of a no deal Brexit, we would allow all lawyers from outside the UK who are seeking admission as a solicitor of England and Wales to apply for exemptions from the QLTS. They would need to demonstrate equivalent qualifications or experience to the Day One Outcomes. We also proposed that these exemptions should only be granted from the whole of the QLTS Multiple Choice Test or Objective Structured Clinical Examination or both. Further, that we would continue to take into account any additional qualifications which a candidate may rely on to demonstrate equivalence, such as the land law examination run in Dublin by the Law Society of Ireland.
10. We did not propose to change the current position for intra-UK lawyers.
11. We proposed removing the provision in the Authorisation of Individual Regulations that specifically entitles an individual who is a part-qualified legal professional of an EU member state other than the UK to apply for exemption from the SQE. We proposed however to make it clear that we would consider applications from any partially qualified candidates under our “equivalent means” arrangements for so long as these are in place prior to the introduction of the SQE and in relation to those relying on existing arrangements as one of the transitional cohort of candidates.

### **Stakeholder responses**

12. We received 13 responses to the consultation. All the respondents, except one, agreed with our proposal to permit candidates from all non-UK jurisdictions to apply for exemptions from the QLTS.

13. The Law Society of Ireland added that they would like the current position to be retained in respect of solicitors from their jurisdiction; ie that the only additional qualification requirement for Irish solicitors is in relation to land law. Two other respondents argued that Irish lawyers are uniquely qualified in comparison with lawyers from other EU states given their legal system.
14. The Law Society of England and Wales suggested that there could be “room and justification for exceptions which can be achieved. For example, by the Mutual Recognition Agreements (MRAs) or other existing arrangements in full compliance with the WTO obligations. This would allow, for example, the England and Wales agreement with Ireland on automatic recognition to continue, and thus for English and Welsh solicitors to continue to requalify in Ireland without substantial barriers and vice versa.” They also said that we should continue to accept any additional qualifications which a candidate may rely on to demonstrate equivalence. For example, the Land Law exam run by the Law Society of Ireland.
15. They added that “it would be reasonable to judge whether someone should be partially exempted from one of the component parts in a fair and consistent way. There is no evidence given as why this cannot be done as part of the review of whether a candidate is exempt from a whole of an exam”. They suggested that we should provide exemptions for anyone who has studied EU law.
16. On the proposed draft wording to implement the changes, the Law Society pointed out that there is no mention of any criteria that would apply, and no reference to any oversight or appeal provisions.
17. One respondent disagreed with our proposals to permit candidates from all non-UK jurisdictions to apply for exemptions from the QLTS. They suggested that “there is a possibility that if an objective criterion is used to grant exemptions, persons with qualifications that look good on paper but lacking substantive practical knowledge will gain admission into the profession”.
18. All respondents who answered the question agreed with our proposal in relation to part-qualified candidates under the current system (namely, to continue to deal with all partially qualified applicants, from whatever jurisdiction, under our “equivalent means” regime). Two respondents queried why we would not continue to allow part-qualified lawyers to apply for exemptions when the SQE is introduced.

## **Our position**

19. Since we consulted, a Statutory Instrument amending the EU (Recognition of Professional Qualifications) Regulations 2015 (MRPQ) has been published. It will require us to receive applications for authorisation and admit applicants whose qualifications are equivalent to ours and which *were obtained* in an EEA state or Switzerland. This SI has not yet been passed by Parliament.
20. We propose to proceed with our original proposal to allow any qualified lawyer from outside the UK to apply to us for recognition of their prior qualification or experience.

21. This will be compliant with WTO rules and with the amended Directive (which allows us to recognise qualifications from a wider range of applicants if, as here, we have underlying statutory powers which enable us to do so). It will also meet our stated policy objective – which will be implemented under the new SQE arrangements - to apply a fair, proportionate and consistent approach to all qualified lawyers, regardless of where they gained their prior qualifications, whilst ensuring that all those who are admitted to the solicitor profession in England and Wales have met – and can be demonstrated to have met – the same standards. There is nothing in the consultation responses which lead us to consider that an alternative, narrower approach would be preferable.
22. We do not consider that it would be appropriate for us to agree exemptions based on principles of reciprocity alone, although we are of course in discussion with other regulators and competent authorities about recognition of qualifications for incoming and outgoing lawyers. In all our work, we must have in mind – and work to balance - our statutory regulatory objectives. Here, our approach to exemptions must be based on the need to ensure consistent and robust standards in accordance with our duty to protect and promote the interests of consumers, and to ensure whilst doing so that we are encouraging an independent, strong, diverse and effective legal profession.
23. By way of clarification, there is no change proposed for the arrangements currently in place for Irish qualified solicitors seeking to enter the profession in England and Wales. The current position for solicitors qualified in the Republic of Ireland will be preserved by our continued ability to take into account additional qualifications which a candidate may rely on to demonstrate equivalence. Accordingly, we will continue to admit those who have completed the land law examination run in Dublin by the Law Society of Ireland. The position for those wishing to qualify as Irish solicitors post Brexit is for the Law Society of Ireland.
24. We maintain our position that individuals should not be entitled to apply for exemption from part of either the multiple-choice test or the objective structured clinical examination. This is to assure consistency of standards and reliability of the assessments and is in line with best practice in the delivery of assessments and standards setting. An assessment in which all candidates attempt the same questions is more reliable than an assessment in which some candidates are exempted from particular questions. Our proposals entitle more QLTS candidates to apply for exemptions. The greater the number of candidates with partial exemptions, the more difficult it would become to ensure consistency of assessment. Permitting candidates exemptions only where their prior qualifications and experience matches all of either the multiple choice test or the objective structured clinical examination strikes the right balance between recognising prior qualifications and experience, and ensuring a consistent and reliable assessment. It is also consistent with the approach we have agreed to apply in the future in respect of the SQE.
25. This means that we will not give exemptions to individuals who have studied EU law, unless they can also demonstrate qualifications or experience

equivalent to the whole of the multiple choice test or the objective structured clinical examination.

26. By way of clarification, this is the position we have established in respect of the SQE. As stated above, qualified lawyers from all jurisdictions will be entitled to apply for exemptions from the SQE, on the basis that they can demonstrate that their qualifications and experience are equivalent in content and standard. They will be entitled to exemptions only where they can demonstrate that their qualifications and experience are equivalent to a whole examination within the SQE.
27. We note the Law Society's comment that there is no reference to any criteria or appeals process. Appeal arrangements are covered under separate rules and guidance, and we will review and update these, including our existing criteria and processes, in light of our proposed changes. We will also introduce a system to verify an individual's qualifications and experience.
28. We propose to proceed with the changes proposed in relation to part-qualified candidates, both in the current system and when the SQE is introduced. Therefore, we will remove the provision in the new arrangements for the SQE which entitles an individual who is a part-qualified legal professional of an EU member state other than the UK to apply for exemptions from the SQE. In doing so we note that the SQE is an end-point assessment: We do not recognise, approve or regulate any underpinning training or qualifications. Part-qualified candidates do not need to go back to the start of any training pathway as we do not specify one. So we plan to apply a consistent approach: we will not allow exemptions for any part-qualified or unqualified lawyers, wherever they come from. This will ensure that all candidates (save for those who are fully qualified lawyers) will be required to pass the same assessment, safeguarding consistency of standards.

## Table of respondents

<b>EY Riverview Law</b>
<b>Junior Lawyers Division</b>
<b>The Law Society</b>
<b>Law Society of Ireland</b>
<b>Joseph Linson</b>
<b>Liverpool Law Society</b>
<b>Merlyn Consulting Ltd</b>
<b>QLTS School</b>
<b>Harikrishnan Ravindran</b>
<b>Yusuf Sheikh</b>
<b>Three other respondents wished to remain anonymous</b>