

# **A new route to qualification: New regulations Consultation response**

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November 2017

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# Introduction

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1. This paper summarises the responses we received to our consultation: *A new route to qualification: new regulations* and sets out our decisions on next steps.
2. This was the third consultation on proposals to introduce a common assessment for aspiring solicitors, the Solicitors Qualifying Examination (SQE). The purpose of this consultation was to seek views on the regulations needed to bring the SQE into force and on proposed arrangements for recognising other qualified lawyers once the SQE is introduced.
3. In April 2017, we made the decision to introduce the SQE. We agreed that anyone wishing to qualify as a solicitor in the future must:
  - pass SQE stage 1 and stage 2
  - complete a period of qualifying work experience of not less than two years
  - hold a degree or equivalent qualification or experience
  - satisfy us of their character and suitability.
4. We also agreed that:
  - qualifying work experience must be signed off by either a compliance officer (COLP) or a solicitor where the candidate has worked. If neither of those are available, it could be signed off by another solicitor from another organisation
  - we would limit qualifying work experience to four placements
  - we would issue guidance that candidates should not attempt SQE stage 2 until they had completed a substantial period of qualifying work experience.

## The response to the third consultation

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5. We published the consultation on our website and sent it directly to 58 stakeholders including:
  - other legal regulators
  - representative and public interest bodies in England and Wales, and
  - overseas Bars and Law Societies throughout Europe and in key jurisdictions in the rest of the world.
6. We received 47 responses to the consultation. We are grateful to all of those who took the time to respond to the consultation.
7. We have also spoken to a range of key organisations, including:
  - CILEX Regulation
  - the Bar Standards Board
  - the CCBE (Council of Bars and Law Societies of Europe)
  - the Law Societies of Scotland, Northern Ireland and of the Republic of Ireland.
8. We will meet individual regulators and professional bodies to take forward any points they have raised which particularly apply to them.
9. Views were divided on the regulations. There were a range of comments in four main areas:
  - Whether they implemented the agreed policy framework for the SQE.
  - The drafting of the regulations.
  - The underlying proposal to introduce the SQE.
  - The proposals for recognition of qualified lawyers.
10. On our proposals for recognition of qualified lawyers, some respondents disagreed with the proposed approach; some were supportive; and others supported the principle of recognition but disagreed with the proposed approach.

### **Our response**

11. We have carefully considered all responses and have made some drafting changes to the proposed [SQE regulations](#) and to the principles of recognition for qualifying lawyers seeking admission as a solicitor of England and Wales.
12. We have agreed that the introduction of the new assessment is about making sure both the public and profession can trust in consistent, high standards. In relation to qualifying work experience, the introduction of SQE stage 2 has introduced an independent, consistent check on whether a candidate can demonstrate the appropriate competencies.

13. We understand the concerns raised about the proposed drafting of regulations on who can sign off a candidate's qualifying work experience. This includes whether somebody outside an organisation will know enough about a candidate's work, and if it could result in a candidate having insufficient exposure to a solicitor.
14. What is important is that the person signing off the qualifying work experience can satisfy themselves that the candidate has had the opportunity to develop the competences in the Statement of Solicitor Competence. There will be a range of ways in which they can do this and we will issue guidance to help COLPs and solicitors to do this. In response to the feedback from stakeholders we have added regulations to require:
  - the COLP or solicitor signing off the qualifying work experience to take sufficient steps to satisfy themselves that the candidate has met our requirements
  - a solicitor outside the organisation to have direct experience of the candidate's work. They must have undertaken a review of their work, which may include a review of their training diary or portfolio, to satisfy themselves that the candidate has had the opportunity to develop the competences in the Competence Statement and they must receive feedback from the person supervising the candidate's work
  - the COLP or solicitor to confirm that no issues arose during the period of work experience that raise a question as to the candidate's character and suitability to be admitted as a solicitor. Or if such confirmation cannot be given, then details of any such issues so that we can assess them as part of the character and suitability test. This will ensure that any ethical issues observed during the period of qualifying work experience are flagged before the candidate is granted admission as a solicitor.

### **Maintaining an approach focused on consistent high standards**

15. We have not made other major changes to the drafting of the regulations, or the accompanying principles. This is because we believe they accurately reflect the approach agreed by our Board in April 2017. This approach aims to make sure that all solicitors meet consistent, high standards at the point of entry to the profession. It also aims to widen access to the profession through allowing greater flexibility in terms of the paths available to qualification.
16. Many of the suggestions we received would fundamentally change decisions we made in April. For example, that we should make law firms carry out their own assessment of a candidate's competence. If we did this, it would mean we were not addressing the risk around inconsistent standards.
17. Other proposals were out of step with our approach to drafting regulations. We are committed to creating regulations that focus on high level principles that matter instead of overly prescriptive ones that focus on input or process requirements.
18. Some comments did, however, raise new points and we have addressed these below.

## Addressing the need for more detail

19. We recognise stakeholders' need for more information about how the SQE and underlying processes will operate. We will publish more information about the SQE including the:

- detail of the SQE assessments
- proposed costs
- assessment timetable
- sample assessments
- process for recognition of qualified lawyers.

We will do this as it is developed and well in advance of the implementation of the SQE.

20. We also understand peoples' concerns that they will need to understand what supporting material will be available to help them understand how the SQE will work. In particular, what it means for them – whether they are an aspiring solicitor, an academic institution, a training provider or a law firm.

21. While there will no longer be resources such as the Legal Practice Course Information Pack or the Training Contract Handbook, the regulations relating to the SQE will be supported by a suite of supporting materials that will include a detailed assessment specification (drafts of which we have already published) and a toolkit of resources.

22. The toolkit will include answers to frequently asked questions and prompts for stakeholders, for example, to help candidates make key decisions. It will also help law firms and other organisations develop appropriate systems for recruitment and training.

23. The assessment specification will set out the content and structure of the SQE and how this relates to the Statement of Solicitor Competence. It is designed to enable providers to prepare curricula and law firms to develop good training.

## Continuing to get our stakeholders' views

24. We still have a lot to do to prepare for the implementation of the SQE. We recognise that if we are to get this right, we need to involve the expertise of the profession and legal academics in this work. We intend to continue to develop the SQE in an open and inclusive way.

25. In addition to a continued programme of face-to-face meetings and targeted events, we have also set up groups to make sure that we continue to benefit from a range of experts' views. This includes:

- our [online reference group](#), which is open to all stakeholders to join
- a smaller SQE Reference Group which includes key academic and professional representative groups.

26. We plan for the first set of guidance materials to be available by the start of next year. We are gathering views on what people would find most useful and welcome feedback on this.
27. We are also part way through the process of appointing an assessment provider. Once appointed, there will be extensive work with stakeholders to develop and test the detail of the assessment.

### **Next steps**

28. We will ask the Legal Services Board to approve the SQE regulations. As a fundamental change to our approach, we expect them to review it carefully. This may take time, but we anticipate any decision will come before we plan to appoint an assessment provider.
29. If the regulations are approved, we expect to confirm the appointment of an assessment provider in April 2018.
30. We will determine on which date the regulations will be implemented, but it will be no earlier than September 2020.

# Summary of feedback from the consultation and our response

## Part one: General comments

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### Call for more detail

31. Many respondents thought the regulations were too brief and wanted to see more detail and prescription.

"The proposed regulations are clearly drafted and easy to follow but [there is a] lack of content behind Reg 1.1a and 1.1(c)" Manchester Metropolitan University

"Broadly, yes [we agree that these regulations implement the agreed policy framework for the SQE]. Given the high level nature of the rules we would be interested to see any additional supporting guidance in due course." Bar Standards Board

"The regulations are very brief and lacking in any substance to analyse; therefore, on a superficial basis, it would be easy to say that they do appear to implement the agreed policy framework, but more detail is required before we can be assured and positively move forward. We cannot discuss in detail the proposals as we have not been given the necessary information; therefore, [our] comments are few, not because we are generally content with the proposals but because of the vagueness of the information given." Birmingham Law Society

32. We took the same approach in drafting the regulations as we did in the consultation on the new SRA Handbook, *Looking to the Future - flexibility and public protection*. The regulations are purposely drafted to capture essential requirements, instead of including detailed, prescriptive rules that cover unnecessary detail.
33. This enables us to future proof our regulation. It avoids regulations and rules which create processes that we must then monitor (for example, requiring firms who train candidates for the SQE to be authorised by us). It enables us to focus on the core issue of assuring standards. Having rules which are transparent, proportionate and targeted also aligns with the better regulation principles. The level of detail about the SQE is no different to the level of detail about the Legal Practice Course in the current training regulations. Information on how the regulations operate will be in accompanying guidance, such as the Principles of Recognition for Qualified Lawyers, which were included in the consultation, and, in due course, the SQE Assessment Specification, and our SQE resources.



34. Respondents also called for more detail about the SQE. For example, they wanted more detail on:
- the cost of the SQE assessment
  - preparatory training courses
  - transitional arrangements
  - sample questions
  - how SQE results will be published
  - details of preparatory training
  - periods of validity and re-sits.
35. We recognise that information about how the SQE operates and underpinning processes is important to stakeholders and we will make sure that it is available in good time before the SQE goes live. Information about training courses will also be available but will be provided by the market, not us.
36. Some detail is already available but sits in other supporting material. For example, our policy on re-sits and periods of validity is set out in the SQE draft assessment specification, which we have already published. We are already consulting on our proposed transitional arrangements in our recently published consultation [Looking to the future – phase two of our Handbook reforms](#).

### **Equality impact assessment**

37. Some respondents asked us to publish an equality impact assessment to determine the impact of the regulations and the SQE. We published a full [Equality Diversity and Inclusion risk assessment](#) alongside the response to the second consultation.

### **Timeframe for implementation of the SQE**

38. Some respondents suggested that it would not be possible to introduce the SQE by 2020.

"The SRA has moved the target date for full implementation of the SQE from September 2019 to September 2020. The Panel welcomes this postponement, but continues to believe that this is an ambitious target which risks putting the SQE in jeopardy should it be followed slavishly." The Legal Services Consumer Panel.

39. September 2020 is a target date, based on a timetable that we think is realistic and feasible. We do, however, recognise the importance of producing an assessment in which stakeholders can have confidence. We will therefore keep the date under review as our work progresses.

## **Comments on the rationale for the SQE**

40. A number of respondents said that, while they had provided comments on the proposed regulations, they did not support the decision to introduce the SQE and commented on aspects of the underlying policy framework that have already been consulted on, debated and agreed by the SRA Board. We do not intend to address comments about the introduction of the SQE as the purpose of the consultation was solely to seek views on the regulations needed to implement it.
  
41. However, there were some misunderstandings about aspects of the new qualification system, particularly about the purpose of the period of qualifying work experience. We explain below why we are introducing a period of qualifying work experience, and how this is different to the period of recognised training that currently exists.

## Part two: Comments on the SQE regulations

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### Qualifying work experience – general

42. Many respondents provided comments on the period of qualifying work experience. Many were concerned that the flexibility of qualifying work experience reflected in the drafting of the regulations would affect the quality of the training received and, ultimately, the reputation of the solicitors' profession.
43. Respondents wanted the regulations to be more prescriptive and to retain many, if not all, the existing requirements of the period of recognised training. For example, respondents suggested that we should continue to ask candidates to keep a detailed training record and that we should include requirements for candidates to gain work experience in three areas of law and in contentious and non-contentious areas.
44. Some respondents also suggested that we should include new prescriptive requirements for candidates to have completed specified amounts of qualifying work experience before they were allowed to sit SQE stage 2. Or that each of the competences developed during the period of qualifying work experience needed to be individually signed off during that period.
- "The QWE is one of the four criteria for admission and therefore to meet the consistent high standards which is the objective of the policy framework... there should be more focus on the intrinsic quality of the QWE." City of London Law Society.
45. The wide range and nature of the comments received suggests to us that this is an area where stakeholders would welcome more information about the purpose of the qualifying work experience requirement and guidance about how it might work in practice.
46. We set out the purpose of the qualifying work experience in our response to the second SQE consultation. It is necessary to expose candidates to the way a solicitor works in practice, to clients and to ethical problems. It is also intended to provide an opportunity for candidates to develop the competences set out in the Statement of Solicitor Competence, and therefore prepare for SQE stage 2. SQE stage 2 moves the focus away from rotating candidates around different practice areas and onto developing the core competences needed to practise as a solicitor.
47. The demands of the SQE stage 2 assessments, and the publication of pass rates by training providers, should drive good learning and good quality training so that detailed and prescriptive requirements for the period of qualifying work experience are not necessary. Publication of pass rates by training providers, including law firms, means that candidates will know where they can get good training. The greater flexibility provided by the new system will also allow firms to tailor training to the needs of their own business.

## Qualifying work experience – sign off

48. Respondents raised a number of queries about the arrangements for signing off qualifying work experience.

## Regulation 2.2

49. A number of people queried why the draft regulations require the Compliance Officer for Legal Practice (COLP) or solicitor to sign off that a candidate has had the "opportunity" to develop some or all of the competences in the Statement of Solicitor Competence, rather than requiring confirmation that the candidate has actually met the competences. They also queried why the person signing off the qualifying work experience is required to sign off that the candidate has had the opportunity to develop "some or all" of the competences in the competence statement, not all of them.

"The declaration provided for regulation 2.2, that a person has had 'the opportunity to develop some or all of the prescribed competences' is an inadequate check on the quality and effectiveness of the qualifying work experience. It is extremely vague. How many competences constitute 'some'? In fact, it is so vague that it becomes almost meaningless, and is not a substitute for assessing whether a candidate has met competences during the work experience - it seems like mere window dressing, therefore. Having said this, we recognise the difficulties of assessing the period of qualifying work experience. Nevertheless, the proposed certification seems unsatisfactory." Cardiff and District Law Society

50. The SQE stage 2, not the declaration that qualifying work experience has been completed, will allow us to assess whether a candidate has developed the competences in the Statement of Solicitor Competence. It provides a consistent basis for assessment, which is not possible where individual law firms are each making separate judgments as to someone's competence.
51. Likewise, it will not be necessary for the declaration to confirm that qualifying work experience has provided an opportunity for all the competences to be developed, because we will check this through SQE stage 2. And, in practice, candidates may obtain qualifying work experience in more than one organisation, so they could be developing different competences at different times and places.
52. Some respondents were also concerned about the proposal to allow a candidate's work experience to be signed off by a solicitor who works outside the organisation where the candidate has been working, if there is not a solicitor employed within the organisation. Others queried why we have restricted the sign off of the work experience to COLPs and solicitors, rather than any authorised person.

"The draft regulations envisage... a scenario whereby confirmation that the appropriate standard has been met can be given by a solicitor who is neither the organisation's COLP, nor a solicitor who may have overseen the work being carried out. The LLS are of the view that there is a risk that such an individual would not be appropriately placed to sign off such work having seemingly had no contact with the individual

concerned, and are unable to envisage circumstances where this may be deemed appropriate." Liverpool Law Society

53. We set out the reasoning behind our decision as to who can sign off the qualifying work experience in our response to the second consultation. We remain of the view that this should be limited to COLPs and solicitors, rather than extending to any authorised person. This is because our regulatory relationship with COLPs and solicitors means that they are required to meet the standards set out in our Code of Conduct and Principles and we can take regulatory action against them in the event of any wrong doing, for example, if they gave a false declaration.
54. We have thought hard about whether a solicitor outside the organisation should be able to sign off a candidate. We recognise that a core purpose of qualifying work experience is to expose candidates to the way a solicitor works, to clients and to ethical problems. However, arrangements could be made by a candidate with an external solicitor where s/he was able to work sufficiently regularly and closely with a candidate. For example, a candidate could make arrangements for the solicitor to act in a mentoring capacity during the period of qualifying work experience and to meet regularly with the candidate to review their work discuss how they are getting the experience they need to develop the competences.
55. The third party solicitor would also be required to meet the standards set out in our Code of Conduct and the overarching Principles. This means, for example, that they must act with integrity and comply with their regulatory obligations in order to satisfy themselves that the placement was substantive enough to meet the objectives of qualifying work experience and that the candidate had the opportunity to develop the competences in the Competence Statement before making a declaration.
56. We have added a requirement to the regulations that the COLP or solicitor must take sufficient steps to satisfy themselves that the candidate has met our requirements. We have also added additional controls to make sure that the third-party solicitor takes their responsibility seriously and has sufficient experience of the candidate's work to sign off the work experience. We have added a regulation to require the third-party solicitor to have direct experience of the candidate's work. They must have reviewed it, which may include a review of their training diary or portfolio, to satisfy themselves that the candidate has had the opportunity to develop the competences in the Competence Statement. They must also receive feedback from the person supervising the candidate. We will make clear in guidance, however, that the third-party solicitor does not need to check the quality of the candidate's work in order to assess whether they have developed the competences necessary to become a solicitor. We will check this through SQE stage 2. We think that these additional protections will provide adequate protections without creating unnecessary regulatory burdens.
57. With these additional protections in place, we have therefore concluded that it would not be right to exclude this possibility and we remain of the view that, where there is no solicitor working in the organisation, a candidate should be able have a solicitor outside their organisation sign off their work experience.

58. We will issue guidance to set out the ways in which COLPs and solicitors can satisfy themselves that the candidates have had the opportunity to develop the competences set out in the Statement of Solicitor Competence. We will also add in a new regulation to require the COLP or solicitor to confirm that no issues arose during the period of work experience that raise a question as to the candidate's character and suitability to be admitted as a solicitor, or if such confirmation cannot be given, then details of any such issues so that we can assess them as part of the character and suitability test. This will ensure that any ethical issues observed during the period of qualifying work experience are flagged before the candidate is granted admission as a solicitor.

### **Qualifying work experience – clarification of regulations**

59. Respondents asked for clarification on a number of terms in the regulations. For example, they asked:

- how we will define "full time equivalent"
- whether we will put any restrictions requiring solicitors signing off work experience to be three years' qualified
- whether they will need to hold a practising certificate.

60. We do not intend to place any restrictions on solicitors signing off the period of qualifying work experience. This is because, as suggested above, all solicitors working in legal services will be subject to our Code of Conduct and should not sign off a candidate's work experience unless they are satisfied that it meets our requirements. The definition of a solicitor for this purpose will include solicitors on the roll, as set out in the glossary to the SRA Handbook<sup>1</sup>.

61. We would expect candidates and firms to take a common sense approach to deciding how long the period of qualifying work experience should be if the candidate does not work on a full time basis or if a candidate has to take any extended time off, for example, through illness. Whether or not, and how long, the period of work experience should be extended in these circumstances will depend on the individual circumstances. It is not possible, or desirable, to draft a regulation which covers every individual situation so we would expect the solicitor or COLP signing off the work experience to take a common sense view based on the individual's circumstances.

62. One respondent suggested that saying 'at least two years' in regulation 2.1(b) (rather than just two years) could encourage firms to keep candidates in a training capacity for longer than is needed in order to pay them a cheaper wage. We want to retain flexibility in the length of the qualifying work experience because some candidates may genuinely need longer than two years to develop the competences necessary to pass SQE stage 2. As set out above, all solicitors and firms employing SQE candidates are required to meet the standards set out in the Codes of Conduct and to comply with the overarching Principles. This means that they will need to act with integrity and comply with their regulatory obligations. They should not refuse to sign off a candidate's work experience if they have met the requirements for qualifying

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<sup>1</sup> Solicitor means a person who has been admitted as a solicitor of the Senior Courts of England and Wales and whose name is on the roll kept by the Society under section 6 of the SA

work experience and the candidate has had the opportunity to develop the competences in the Competence Statement.

63. There was some confusion about the phrase “confirmation in the prescribed form of the period of work experience” in regulation 2.2. This is intended to refer to the prescribed form of declaration that the period of qualifying work experience has been completed, not the form of any training record.

### **Apprenticeship standards**

64. Some respondents asked why our approach to the period of qualifying work experience was out of step with the approach required for candidates following an apprenticeship route to qualification.

“In our view it would be a striking anomaly in the admission regulations for employers or training providers to have to certify ‘satisfactory completion of the work-based assessment to the level of competence specified in the Threshold standard’ for an applicant to be able to qualify as a solicitor through the apprenticeship route, but other applicants simply need confirmation that they had ‘an opportunity’ to develop skills during their QWE, with no evidence of which skills nor the level of competence reached.” University of Law

65. The apprenticeship standard leading to qualification as a solicitor was developed by the Legal Trailblazer Employer panel in 2015 and so the accompanying assessment plan does not yet refer to the SQE. We understand it will be updated to refer expressly to the SQE.
66. However, apprentices will have to pass an independent centralised assessment, SQE stage 1 and stage 2, to demonstrate that they have met the apprenticeship standard and so qualify as a solicitor.
67. As is appropriate for a route to qualification, the apprenticeship standard includes requirements to be met during the apprenticeship. Therefore, there is a requirement in the apprenticeship assessment plan for ongoing assessment of the apprentice's progress against the apprenticeship standard. This assessment will ask whether the apprentice has had the opportunity to and is developing the skills and knowledge required to pass SQE stage 1 and then to pass the apprenticeship end-point assessment, SQE stage 2. But, it will be through the apprentice's performance on the SQE that we will make sure that apprentices are competent (not through the ongoing assessments). This is consistent with our approach to non-apprentice candidates.

### **Degree or equivalent**

68. A number of respondents asked for clarification on what will count as “degree or equivalent”. Some suggested that experience should not be counted as equivalent to a degree and that this should be removed from the regulations.
69. We will publish guidance on how we will determine if a qualification or experience is equivalent to a degree. We will reference recognised qualification frameworks and the evidence needed to prove this.

## Assessing character and suitability

70. Some respondents raised queries regarding the timing of our assessment of candidates' character and suitability. We are currently consulting on our approach to the assessment of character and suitability in the *Looking to the future: phase two of our handbook reforms*<sup>2</sup>.

## Specific drafting comments

71. We are grateful to respondents for the wide range of drafting comments we received on the regulations. We have considered all of the suggestions and have made some amendments to the regulations. We have also added a section in the regulations to refer to part-qualified lawyers. These rules are designed to give effect to the Morgenbesser<sup>3</sup> decision.
72. Where we have not accepted drafting suggestions, it is because we made a decision to draft the regulations that way for a particular reason as in the examples in paragraphs 44-47 above.

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<sup>2</sup> <http://www.sra.org.uk/sra/consultations/lttf-phase-two-handbook-reform.page#download>

<sup>3</sup> The Morgenbesser judgment requires us to give credit for part-qualified lawyers from EU jurisdictions



## Part three: Comments on our approach to qualified lawyers

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### General comments

73. Views were mixed on our recognition of qualified lawyers proposals. Some respondents welcomed the proposals, acknowledging the need to recognise the knowledge and skills already gained by qualified lawyers. They also saw the benefit in making sure that the English and Welsh legal marketplace remained open and attractive to lawyers from around the world. Some respondents supported the principle of recognition of qualified lawyers, but disagreed with the proposed approach to recognition. These respondents also called for more detail on how we will apply the recognition principles in practice.
74. Others did not agree with our proposals. Some questioned why we took different approaches for qualified lawyers and non-qualified lawyers. Others were concerned that if we did not ask all qualified lawyers to take the full SQE, then there could be an impact on standards and the reputation of the profession. Some suggested that we were going beyond our obligations and should only apply the recognition principles to EU lawyers.

"We support the SRA's decision to exempt foreign qualified lawyers from sitting the SQE upon the SRA being satisfied that the individual meets all of the prescribed competences. The Draft Principles set out a clear framework for enabling this." Freshfields Bruckhaus Deringer

"YLAL recognises the need for a consistent approach to be taken when recognising the knowledge, skills and competences of qualified lawyers. However, it is difficult to assess the impact that the SQE will have on qualified lawyers from other jurisdictions until full details of how the knowledge, skills and competences will be assessed are published by the SRA. We consider that an emphasis should be placed on ensuring that the SQE does not deter talent from outside of the UK, particularly where any deterrent would have an adverse effect on social mobility across the legal sector." Young Legal Aid Lawyers

"The rules for qualified lawyers are markedly different to the rules for the domestic route through the SQE. This will lead to inconsistencies in the qualifications and experience of the domestic route and those of the qualified lawyers' route, which is something the SQE policy framework sets out to eliminate. There are no exemptions for UK law degrees for any part of the SQE, yet there are exemptions for overseas qualifications." The City of London Law Society

75. Our policy is that we will not ask lawyers who have already qualified in another jurisdiction (their home jurisdiction) to take an assessment of knowledge and skills that have already been recognised in their home jurisdiction, provided that those knowledge and skills are not substantially different to the knowledge and skills tested through the SQE.

76. Our evaluation of the equivalence in content and standard between other legal qualifications and the SQE is intended to ensure an appropriate and proportionate approach to consumer protection in this area. Where a qualified lawyer comes from a country which has a substantially different legal system compared with English and Welsh law, we will assess their knowledge of English and Welsh law through SQE stage 1.
77. We have taken the decision to apply a consistent approach to all qualified lawyers, regardless of whether they come from the UK, from the EU or from elsewhere in the world in order to create a level playing field and a coherent framework for the recognition of legal qualifications obtained elsewhere. Qualified lawyers, unlike those seeking to qualify for the first time, have already had their legal competence recognised in their home jurisdiction and by their own regulator and they are already qualified and entitled to practise law. By contrast, those who are unqualified but seeking qualification as a solicitor for the first time, have not previously had their legal competence recognised. Neither are they already qualified or entitled to practise law. Accordingly such individuals will be required to take the whole of the SQE.
78. Some respondents thought that further engagement on the proposals for recognition of qualified lawyers would be necessary once the outcome of the Brexit negotiations was clear. We will consider this point further in due course on the basis of the detailed arrangements for the UK's departure from the EU – but for the present we do not consider that such further engagement will inevitably or necessarily be needed. As set out in the consultation, in bringing forward the current set of principles, we have taken into account both the likely implications of the UK's departure from the EU and the desirability of reinforcing our jurisdiction as one that is an attractive place to do business.
79. Some respondents suggested that it is important for us to promote mutual recognition arrangements with other jurisdictions (in other words, that recognition of English solicitors by other jurisdictions should be a pre-condition for our recognition of practice rights of lawyers from that jurisdiction here). In this context, we take the view that it is our primary responsibility to ensure standards and uphold the rule of law on a consistent basis; thus it will not normally be any part of our regulatory policy to make admission as a solicitor here conditional on an overseas jurisdiction permitting English solicitors to practise there.

### **English language test**

80. Some respondents asked why we may seek to impose an English language requirement for some qualified lawyers when they apply for their first practising certificate, rather than when they apply for admission. "YLAL agrees with the SRA's proposal that an English language test should be a requirement. We do, however, question the decision for it to take place post-admission, at the point of application, for the first practising certificate. YLAL suggests it may be a fairer approach if the language test was to take place pre-admission, at the point applicants are asking for previous qualifications and experience to be recognised." Young Legal Aid Lawyers

81. By way of explanation on this point, EU law (in the form of the Professional Qualifications Directive 2005/36/EC) requires professionals benefiting from mutual recognition of qualifications to have a knowledge of languages necessary for practising the profession in the host Member State. But checks on language ability may only be carried out after the recognition of the qualification (ie may not be a precondition of such recognition). Checks on language ability for EU candidates must be considered on an individual, case by case, basis. Further (as set out in Annex 2 of the consultation, at paragraph 6 and note 6), a test of language ability may only be imposed in cases of 'serious and concrete doubt' about the sufficiency of the professional's language knowledge in respect of the activities they intend to pursue. We believe it is in the public interest for anyone who wants to practise as a solicitor in England and Wales to have good command of the English language. Further, as already set out, our policy seeks to ensure a level playing field for non-EU and EU lawyers wherever possible. For these reasons, we will apply the language requirement at the stage when a solicitor seeks a practising certificate rather than at an earlier stage, and will do so in accordance with any applicable requirements of EU law.

### **The standing of the principles for qualified lawyers**

82. Some respondents queried the actual status of the principles for qualified lawyers as they are not referred to in the SQE Regulations.

"Annex 2 is not referred to in the draft regulations and so how will the principles set out in Annex 2 apply to the recognition of the knowledge and competences of qualified lawyers? Annex 2 does not seem to have any standing." City of London Law Society

83. We have explained our approach to the drafting of regulations in paragraphs 32 and 33. The principles for qualified lawyers are part of the suite of documentation that supports and underpins the SQE Regulations. We will use them to design the detailed process for recognition of qualified lawyers.

### **Assessment of qualifications and experience**

84. Some respondents asked for clarification on what criteria we will use to assess whether the knowledge, skills and competences acquired through prior qualifications and professional experience is equivalent to the whole or a component of the SQE.

"Cilex Regulation understands that the SRA is not proposing to 'level' the SQE against the national qualification frameworks, but is proposing to assess exemptions for qualified lawyers for both content and standard. Cilex Regulation would like more detail as to how the standard will be objectively assessed for the SQE as against qualification arrangements for other qualified lawyers. This is particularly important to enable the exemptions available to Chartered Legal Executives and Cilex Practitioners to continue." Cilex Regulation

85. We will assess the content and standard of qualifications and professional experience against the Statement of Legal Knowledge, the competences set out in the Statement of Solicitor Competence and our threshold standard. For

a qualification or experience to be recognised, it should not be substantially different to the whole or an individual component of the SQE.

86. A number of respondents asked for clarification about what we mean by "component(s)" of the SQE. It means an individual assessed element of the SQE for which a separate standard is set and a mark provided. We will set this out in the SQE assessment specification.
87. One respondent suggested that we are increasing the burden onto the applicant, who will have to demonstrate that their qualifications and experience are not substantially different to the content and standard of the SQE. As is the case now, applicants seeking recognition of their qualifications or experience will need to provide us with formal evidence to demonstrate how their qualifications or experience are equivalent to the SQE or part of it. We will then have to then assess that information to decide whether it demonstrates sufficient equivalence.

### **Two years' work experience**

88. Some respondents were concerned that our proposed approach may mean that some qualified lawyers could become a solicitor in England and Wales without two years' work experience. Respondents queried how this tied in with our approach for non-qualified lawyers, who must have two years' qualifying work experience.

"There appears to be no requirement for a qualified lawyer to have completed any period of QWE. We had thought that the SRA intended to require two years' work experience. We see no reason for not making it a requirement in the same terms as the domestic requirement. Not to do so is further evidence of inconsistency in standards which the SRA standards set out to eliminate." The City of London Law Society

89. Here again, there is a clear distinction in policy terms between a qualified lawyer who has passed through all necessary stages in order to qualify in another jurisdiction and who already has the right to practise as a qualified lawyer – and an unqualified person seeking to qualify as a solicitor for the first time.
90. In the case of the former, most jurisdictions will require a period of work experience in order to qualify as a lawyer but it is of course right to say that the length of this period may vary from jurisdiction to jurisdiction (just as the length of the academic stage of training may also vary). Within the EU, while some Member States require work experience of 24 months or more, there are some Member States, Italy for example, where only 18 months' work based training is required. It is in the nature of the recognition of professional qualifications that the route to qualification will not be the same in every jurisdiction.
91. In any event, as set out in the consultation, we envisage that qualified lawyers will typically need to have a minimum of two years professional experience in order to demonstrate to us that they have satisfactorily developed, to an equivalent standard, the competences assessed by the part(s) of the SQE for which they are seeking recognition.

## **Practice rights**

92. One respondent queried whether we will recognise the qualifications or experience of a qualified lawyer who has only limited practice rights in either England and Wales or in an overseas jurisdiction. We do not intend to prevent qualified lawyers with limited practice rights from applying for recognition. We will, however, consider the nature of their practice rights and the training they have had to obtain them, in order to assess whether an applicant's qualifications and/or experience are equivalent to a part or parts of the SQE.

## **Charging an administration fee**

93. Where respondents replied to this question, they either agreed with the principle that qualified lawyers who apply for admission as a solicitor of England and Wales on the basis of recognition should be charged a fee, or they requested further information on the fee structure. We will publish the proposed fee well in advance of the implementation of the SQE.