

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

Law Society Response
January 2019

Introduction

1. At the moment, lawyers from other European Union (EU) states can requalify as solicitors of England and Wales through the Qualified Lawyers Transfer Scheme (QLTS). The EU regulations, such as the Mutual Recognition of Professional Qualifications (MRPQ) allows for examining the candidates' competency and assessing whether they would need to pass an aptitude test or complete an adaptation period. The SRA gives exemptions to EU lawyers in appropriate cases.
2. In the event of a "no deal Brexit" this regime will need to change in order to comply with the World Trade Organisation (WTO) rules, such as the Most Favoured Nation (MFN) principle which does *not* allow for preferential treatment of one or more WTO members over others.
3. Therefore, The Law Society is wholly supportive of the SRA putting in place contingency plans for the changes needed to comply with WTO rules. This would mean changing aspects of both the current QLTS Regulations 2011¹ and, when in force, the Authorisation of Individual Regulations to remove preferential treatment for EU lawyers.
4. The Government's technical notice² has already highlighted that the profession must be ready and able to adapt due to the Mutual Recognition of Professional Qualifications Regulations being amended or repealed to meet WTO obligations.
5. In its introduction to the consultation, the SRA set out two options:
 - A. To permit no exemptions from the QLTS; or
 - B. To permit candidates from all non-UK jurisdictions to apply for exemptions: (i) an exemption from the multiple choice test; (ii) an exemption from the objective structured clinical examination; or (iii) an exemption from both the multiple choice test *and* the objective structured clinical examination.

We strongly disagree with option A as this would cause an unnecessary barrier to qualification for lawyers from both within and outside EU jurisdictions, which may have the knock on effect of making England and Wales a less attractive jurisdiction to practice for lawyers overseas. The UK legal sector was worth £26bn to the economy in 2016³. It is also the largest market for legal services in Europe, with around a fifth of the total European market, and almost a tenth of

¹ Qualified Lawyers Transfer Scheme (QLTS) allows fully qualified lawyers from other (recognised) jurisdictions become a solicitor of England and Wales. The regulations include the provisions of the MRPQ.

² 'Providing services including those of a qualified professional if there's no Brexit deal' published on 12 October 2018 and available at: <https://www.gov.uk/government/publications/providing-services-including-those-of-a-qualified-professional-if-theres-no-brex-it-deal/providing-services-including-those-of-a-qualified-professional-if-theres-no-brex-it-deal>.

³ <https://www.lawgazette.co.uk/news/legal-sector-worth-26bn-to-economy/5054361.article>

the global market for legal services⁴. All of these advantages could be imperilled by option A.

6. Considering option B, while we appreciate the need to be compliant with the WTO's MFN principle, we nevertheless think that there is 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.
7. 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.
8. Likewise, we think it is important for those lawyers who have studied EU law to be able to apply for exemptions on that basis. We understand that EU law will for the moment remain as one of the core subjects required by the SRA to become a solicitor.

Questions

9. Our response to the questions posed by the SRA's consultation are laid out below and reflect the Law Society's position at this time.

Question 1

- a) The Law Society agrees with the current position of the SRA to amend the QLTS regulations so as to entitle all non-UK qualified lawyers who are seeking admission as an solicitor to exemptions from the QLTS, where they can demonstrate equivalent qualifications or experience to the 'Day One Outcomes'⁵.
- b) In particular we would support the SRA's proposal to permit candidates from all non-UK jurisdictions to apply for exemptions from the multiple-choice test, or clinical examination, or to both.
- c) This will allow the system of exemptions to be consistent with the approach that will be taken with the Solicitors Qualifying Exam (SQE), which will replace the QLTS for overseas lawyers from 2021 onwards. Furthermore, this will apply a fair and open system, which treats all jurisdictions on an equal footing.
- d) We would request further views from the SRA on whether there will be any exemptions for foreign students in relation to EU law.
- e) We would also encourage the SRA to 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.

⁴ The Law Society of England and Wales. *The EU and the Legal Sector*. October 2015.

⁵ <https://www.sra.org.uk/solicitors/qlts/day-one-outcomes-table.page>

Partial Exemption

- f) The SRA has stated in paragraph 24 of the consultation that, “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).”
- g) We believe 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.

Question 2

- a) We would note the SRA’s requirement to adhere to the LSB’s 2014 Statutory guidance on legal education and training, which tasks regulators with minimising barriers between different parts of the legal profession, and not just in England and Wales but also for Irish (and Scottish) practitioners.

Question 3

- a) We agree with the proposed approach.

Question 4

- a) We agree with the proposed approach.

Question 5

- a) There is no mention of any criteria that would apply, and no reference to any oversight or appeal provisions. We would recommend these are included for each of the different parts of the SQE.