



Changes to the rules on Solicitors Qualifying Examination (SQE) exemptions

Consultation response

10 April 2024

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Executive Summary

We ran this consultation to gather views on a proposed new rule. This change would prevent qualified lawyers from being granted an exemption from part or parts of the SQE that they have previously attempted and failed.

We proposed this change because, if someone has failed the assessment, we consider it to be in the public interest to reassure ourselves of their competence to practise by requiring them to retake and pass the SQE.

Most respondents agreed with the rationale for this proposed rule change. The consultation did not identify any additional negative or disproportionate impacts on individuals because of their protected characteristics.

We have updated our initial equality impact assessment for this rule change at the end of this document. This change would apply to all qualified lawyers, regardless of jurisdiction. It would not directly discriminate against any protected characteristic. Although it would apply equally to both SQE1 and SQE2, it would mainly affect those who have taken and failed SQE2 since we have only approved one exemption for SQE1 so far.

However, while this change would not directly discriminate against any groups, our data on SQE2 suggests that it could indirectly disadvantage some qualified lawyers with certain protected characteristics. This data shows that pass rates for qualified lawyers are generally lower for those who are male, in older age brackets or from a Black/Black British background or 'other' ethnic group. As a result, there is a risk that qualified lawyers from these groups will be more affected by this rule change.

If this risk materialises, this rule change would still be a necessary and justified means of protecting clients and the public. It is in the public interest to require a qualified lawyer to pass the SQE when we have evidence which raises a concern about their competence.

Having analysed responses to this consultation and considered the potential equality impacts, we will:

- submit our application to the Legal Services Board (LSB) for formal approval of this rule change in spring 2024
- subject to approval, we will implement the new rule in summer 2024 (no earlier than 1 June 2024)
- produce clear guidelines for qualified lawyers on this rule change
- communicate this change to qualified lawyers through various channels, including the SQE Update bulletin and on social media
- monitor the implementation of our proposals to identify any unintentional or negative impacts.

Background

The SQE is a centralised examination that anyone wishing to become a solicitor in England and Wales must pass. Introduced in September 2021, it tests aspiring solicitors' competence against the standards required to practice as a solicitor.

In certain circumstances, we may exempt qualified lawyers who wish to also qualify in England and Wales from passing parts of the SQE. Only qualified lawyers are [entitled to apply for an exemption](#) from part or parts of the SQE.

We will grant an exemption if we are satisfied that an individual's qualifications and/or experience are not substantially different in content and standard to the SQE. A qualified lawyer is someone who holds a professional legal qualification that confers rights to practise in England and Wales (eg barrister or licensed conveyancer) or in another jurisdiction.

This consultation invited views on a proposed new rule that would prevent qualified lawyers from being granted an exemption from part or parts of the SQE that they have previously attempted and failed.

To date, we have granted around 3,500 exemptions from SQE2 (the test of legal skills and knowledge) and just one exemption from SQE1 (the test of functioning legal knowledge). In addition to this, solicitors from Northern Ireland and the Republic of Ireland are exemption from all parts of the SQE.

The rules on SQE exemptions are set out in the SRA Authorisation of Individuals Regulations. Our current policy on exemptions is set out in [the Principles for Qualified Lawyers](#).

This consultation ran in parallel to [another consultation](#) on how we gain assurance that aspiring solicitors. This includes qualified lawyers, have the English or Welsh language proficiency needed to practise as a solicitor.

Who we heard from

The consultation ran from 13 December 2023 until 24 January 2024. We also published an [initial equality impact assessment](#).

We promoted the consultation through a range of communication channels, including through SQE Update (our SQE news bulletin with approximately 5,000 subscribers). We also engaged with various stakeholders during the consultation, such as The Law Society.

We received six responses in total from:

- The Law Society
- Liverpool Law Society
- Surrey Law Society
- a training provider
- two qualified lawyers.

We are grateful to everyone who took the time to respond to our consultation. We have reviewed and considered each response in developing our final policy positions.

Our final positions

In this section, we outline:

- each consultation question
- a summary of the responses we received
- our final policy positions
- our next steps.

Consultation question 1: To what extent do you agree that we should change our regulations and the principles for qualified lawyers to prevent qualified lawyers from being granted an exemption from an assessment that they have previously failed?

Summary of responses

Four respondents supported our consultation position, including The Law Society, Liverpool Law Society and Surrey Law Society.

The Law Society and Liverpool Law Society both commented that if someone fails an SQE assessment, they have demonstrated that they have not met the required standards and competences to receive an exemption from that assessment. The Law Society also commented that this proposal would encourage lawyers who have failed an assessment to undertake further remedial training before attempting it again.

Two respondents, both qualified lawyers, disagreed with our position. One respondent suggested that some qualified lawyers who have already received exemptions from SQE2 would fail the assessment if they attempted it. As a result, they argued that failing the assessment should not be taken into account when considering whether to grant someone an SQE2 exemption. The other respondent made some more general criticisms of our exemption policy that are out of scope for this consultation.

Our position

Having considered these various points, we believe it is necessary and proportionate to proceed with this rule change. Where someone has attempted and failed an SQE assessment, it is in the public interest to reassure ourselves of their competence to practise by requiring them to take and pass that assessment.

In our consultation paper, we acknowledged the risk identified by one of the respondents that we could grant an SQE exemption to a lawyer who would fail the assessment if they attempted it. During the development of our exemptions policy, we concluded that this risk would be minimal and tolerable, particularly for SQE2, as we would only grant exemptions to lawyers who:

- were already qualified in their own jurisdiction
- had the same practice rights as solicitors
- had been deemed to have the skills necessary to practise as a lawyer in their own jurisdiction
- would typically have at least two years' legal work experience.

However, if someone has attempted and failed an SQE assessment, we have tangible evidence that they have not demonstrated the required standards and competences of that assessment. Therefore, it is not in the public interest to grant them an exemption.

Consultation question 2: Can you see any other impacts, either positive or negative, from the introduction of this new rule?

Summary of responses

Two respondents noted that the introduction of this new rule would have a positive impact by protecting the profession's reputation. One respondent was neutral on this question.

The Law Society urged us to make sure that any changes we implement comply with all obligations under agreements the UK has or may have with other countries or jurisdictions.

One respondent suggested that this rule change would have a negative impact on all lawyers, but they provided no further details. Another respondent argued that the rule change would unfairly benefit those who had already received an SQE exemption.

Our position

The consultation did not identify any additional negative or disproportionate impacts on individuals because of their protected characteristics.

We said in our initial equality impact assessment that we would interrogate our data on SQE2 further to see if this rule change is more likely to affect qualified lawyers with certain protected characteristics. We have included the results of this analysis in the updated equality impact assessment at the end of this document. These indicate that pass rates for SQE2 are generally lower for qualified lawyers who are male, in older age brackets or from a Black/Black British background or 'other' ethnic group. Therefore, there is a risk that qualified lawyers in these groups will be more affected by this rule change.

If this risk materialises, this rule change would still be a necessary and justified means of protecting clients and the public. It is in the public interest to require a qualified lawyer to pass the SQE when we have evidence which raises a concern about their competence. We will continue to make sure that this rule change complies with all obligations the UK has or may have with other countries or jurisdictions.

As we noted in the initial equality impact assessment, the implementation of this rule change will consider our international legal obligations under the Swiss Citizens Rights Agreement and, from 1 January 2025, the UK/Swiss Trade Agreement. We are bound by the obligations under these agreements, which have been entered into by government and ratified following scrutiny by the UK Parliament.

In line with these obligations, the new rule will apply to a lawyer who has qualified in Switzerland where there exists a substantial difference between the qualified lawyer's professional qualifications. And the essential knowledge or skills required to practise in England and Wales, as set out in Statement of Solicitor Competence, and the knowledge of English and Welsh law.

Consultation question 3: Alongside this consultation we have published tracked change versions of the amendments we propose to make to our current regulations and the Principles for Qualified Lawyers. To what extent do you agree or disagree that the proposed amendments would prevent a qualified lawyer who had failed any part of the SQE from being granted an exemption from that part?

Summary of responses

Four respondents agreed that the proposed amendments would prevent a qualified lawyer who had failed any part of the SQE from being granted an exemption from that part. No additional comments were made. One respondent was neutral on this question.

One respondent stated that the proposed amendments needed to provide greater clarity on SQE2 exemptions but provided no further details. Their response also made some broader points about our exemption policy that are beyond the scope of this consultation.

Our position

The consultation did not identify any specific issues with our proposed amendments to our current regulations and the Principles for Qualified Lawyers.

Next steps

Having analysed responses to this consultation and considered the potential equality impacts, we plan to proceed with this rule change, subject to formal approval from the LSB. We will implement the policy using the proposed changes to our current regulations and the Principles for Qualified Lawyers.

We will submit our application to the LSB in spring 2024. Subject to approval, we will introduce the rule change in summer of 2024 and not before 1 June 2024.

If this change is implemented, we will produce clear guidelines on it and communicate any changes to qualified lawyers through various channels, including on social media and through SQE Update

Updated equality impact assessment

What are the potential equality impacts of our proposed rule change?

This rule change would apply to all qualified lawyers, regardless of jurisdiction, including those from England and Wales. It would not directly discriminate against any protected characteristic. Although the change would apply equally to both SQE1 and SQE2, it would predominantly affect individuals who have taken and failed SQE2. This is because the likelihood of us granting an exemption from SQE1 is low and we have so far only approved one exemption. In addition to this, solicitors from Northern Ireland and the Republic of Ireland are exemption from all parts of the SQE.

However, while this rule change would not directly discriminate against any groups with protected characteristics, our data on SQE2 suggests that it could indirectly disadvantage qualified lawyers with certain protected characteristics. The data shows that qualified lawyers from some specific groups generally perform less well than others, and are, therefore, more likely to fail.

The tables below show the SQE2 pass rates of qualified lawyers between April 2022 and July 2023 broken down by ethnic background, sex and age category. The mean pass rate during this period was 67.2%. These provide data for the first attempt candidates only.

The tables show that pass rates are generally lower for qualified lawyers who are male, in older age brackets or from a Black/Black British background or 'other' ethnic group. There is therefore a risk that qualified lawyers from these groups could be more affected by this rule change.

Table 1

| Ethnic Group | Qualified lawyer pass rate at SQE2 |
|------------------------------|---|
| Asian/Asian British | 70.9% |
| Black/Black British | 50.8% |
| Mixed/multiple ethnic groups | 80% |
| 'Other' ethnic group | 66.1% |
| White | 69.2% |
| Prefer not to say | 74.1% |

Table 2

| Sex | Qualified lawyer pass rate at SQE2 |
|-------------------|---|
| Female | 72.8% |
| Male | 63.8% |
| Other | - |
| Prefer not to say | 68.7% |

Table 3

| Age category | Qualified lawyer pass rate at SQE2 |
|---------------------|---|
| 16-24 | 85% |
| 25-34 | 81.6% |
| 35-44 | 61.3% |
| 45-54 | 39.3% |
| 55-64 | 33.3% |
| 65+ | - |
| Prefer not to say | 59.3% |

This rule change will result in additional costs for those it applies to. It currently costs £1,798 to sit SQE1 (£899 for each assessment) and £2,766 to sit SQE2. The assessment fees apply to anyone who is required to resit an assessment, not just qualified lawyers. They might also choose to pay for preparatory training, incurring additional costs.

Lawyers based outside of England and Wales who fail SQE2 would also need to travel to England and Wales to resit the oral components of SQE2. There is therefore a risk that the change could act as a barrier for qualified lawyers unable to meet the costs of retaking SQE2.

Other than the impacts described above, we have not identified any other potential adverse impacts nor any potential impacts on any other protected groups.

What will we do to mitigate these risks?

If the risks identified above materialise, this rule change would still be a necessary and justified means of protecting clients and the public. Where someone has attempted and failed an assessment, we consider it's in the public interest to assure ourselves of their competence to practise by requiring them to take and pass the SQE.

We think our proposed rule change is a proportionate means of achieving the legitimate aim of protecting clients and the public for the following reasons:

- Our proposed rule change would not prevent those who are competent to do so from qualifying as solicitors of England and Wales. Like other candidates who fail an assessment, they would be required to sit the assessment again and pass it before they can be admitted to the profession.
- Our proposed rule change would not be targeted at lawyers who qualified in any specific jurisdiction. Instead, the rules would be targeted where there is evidence that a qualified lawyer does not meet the standard of the SQE.

If this policy is implemented, we will clearly communicate its implications to qualified lawyers through various channels, including on social media and through SQE Update. We will also communicate our intention to make this policy change, subject to LSB approval, by publishing this consultation response before its implementation. Moreover, we will continue to recognise previously issued exemption decisions made before the changes come into force.

Conclusion and next steps

This rule change would apply to qualified lawyers from any jurisdiction and would not directly discriminate against any protected characteristic.

However, our data from SQE2 shows that pass rates for qualified lawyers are generally lower for those who are male, in older age brackets or from a Black/Black British background or 'other' ethnic group. As such, there is a risk that this rule change could indirectly disadvantage these groups. If this risk materialises, this rule change would still be a necessary and justified means of protecting clients and the public.

If this rule change is implemented, we will clearly communicate any changes to qualified lawyers through various channels, including on social media and through SQE Update.

We have not identified any other potential adverse impacts nor any potential adverse impacts on individuals from any other protected group.

We will monitor the implementation of our proposals to identify any unintentional or negative impacts.