

Request by the Solicitors Regulation Authority (SRA) to the Legal Services Board (LSB) to issue an exemption direction under the Legal Services Act 2007 (LSA) Schedule 4, paragraph 19(3), in respect of alterations to the SRA SQE Assessment Regulations

1. On 5 April 2022, the SRA Board made the SRA SQE Assessment (Amendment) Regulations 2022 (the Amendment Regulations) which amend the SRA SQE Assessment Regulations (the Regulations). The SRA requests that the LSB issue an exemption direction in respect of these changes to our regulatory arrangements.

Summary of the alterations – purpose, intent, effect and impact

2. The amendments to the Regulations are minor. They have been made in light of our experience in dealing with candidates during and after the November 2021 SQE1 assessments. The changes express the underlying policy behind the Regulations, by removing duplication and improving clarity. They do not in any way alter the Solicitors Qualifying Examination (SQE) assessment or any decisions in respect of SQE candidates.

Amendments to the SRA SQE Assessment Regulations

3. The amendments are as follows.
4. Deletion of Regulation 2.2. This Regulation duplicates 2.1 and is unnecessary.
5. Amendments to Regulations 4.1, 4.2 and 4.3. These amendments are not a change of policy. They are a clearer expression of the requirements on sitting assessments in the same assessment window. The amended regulations make it clear that there are exceptions to the requirement that FLK1 and FLK2 must be taken in a single assessment window.
6. These exceptions are where a candidate has already passed either FLK1 or FLK2 and is having a further attempt at the assessment that they failed, and where a candidate has passed either FLK1 or FLK2 but failed to attempt the other assessment in a single assessment window. If the candidate has had a successful application for mitigating circumstances under Regulation 12 in relation to the failure to attend, they can 'bank' the pass for the assessment they have taken and are permitted to take the remaining assessment in a different assessment window.
7. The final exception is where a candidate has made a request for reasonable adjustments under Regulation 11 and the adjustments that have been made allow the candidate to attempt FLK1 and FLK2 in different assessment windows.
8. Following our experience of the November 2021 sitting of SQE1, we feel it is useful to clarify our policy through these amendments to help candidates and aid transparency. The changes reflect the way we interpreted the SQE Assessment Regulations in considering mitigating circumstances applications following the November 2021 sitting.
9. Amendments to Regulation 4.4. The amendments makes it clearer that SQE2 is one assessment and both the oral and written parts must be taken in the same assessment window.

10. Amendments to Regulations 12.1 and 12.2. We have added the words “are likely to”. This clarifies the scope of the SQE Assessment Board’s judgment and decisions. This language also reflects good practice as set out in the Office of the Independent Adjudicator for Higher Education’s Good Practice Framework: Requests for Additional Consideration¹. Our intention is to improve clarity for candidates.
11. We have also made it clear that:
 - candidates who do not attend either FLK1 or FLK2 for reasons which can be attributed to any of the circumstances set out in Regulation 12.1 can make a claim for mitigating circumstances under Regulation 12.2
 - candidates who do not attend both FLK1 and FLK2 cannot make a claim for mitigating circumstances under Regulation 12.2. (These candidates should proceed instead under the cancellation provisions of the Candidate Terms and Conditions, which make allowance for withdrawal on medical evidence).
12. As with the amendments to Regulations 4.1, 4.2 and 4.3, these amendments follow our experience from the November 2021 sitting of the SQE1 assessment.
13. These amendments are marked as tracked changes in the Schedule to the Amendment Regulations in Annex 1. Note that the amended Regulations, when published, will include links to all the necessary supporting materials including the SQE Assessment Specifications, the SQE Terms and Conditions and the SQE policies on marking and standard setting, reasonable adjustments, fitness to sit, mitigating circumstances, and appeals.

Assessment under LSA s. 28(2) – compatibility with the regulatory objectives

14. These amendments do not represent any change in policy. Therefore, they have no impact on the regulatory objectives.

Assessment under LSA s.28(3) – the better regulation principles and best regulatory practice

15. In respect of the principles under which regulatory activities should be transparent, accountable, proportionate, consistent, targeted only at cases in which action is needed, and representing best regulatory practice, the amendments will have a positive impact. They will provide greater clarity and transparency for candidates in respect of the requirements for sitting the SQE.

Why the alterations are necessary

16. Our experience of the first sitting of the SQE in November 2021 highlighted some small areas where we felt there was some scope to improve the clarity of the regulations for the benefit of candidates. The changes reflect the way we interpreted the SQE Assessment Regulations in considering mitigating circumstances applications following the November 2021 sitting.

¹ <https://www.oiahe.org.uk/resources-and-publications/good-practice-framework/requests-for-additional-consideration/>

Why the alterations are suitable for an exemption direction

17. The aim of the Regulations, as approved by the LSB in October 2020, is to govern the SQE assessments, providing fairness, certainty and clarity for candidates. Our experience of the first sitting of the SQE shows that the Regulations are overall fit for purpose. No changes of policy are required. However, the first SQE sitting has highlighted these small areas that require clarification, in order to more effectively achieve the policy purpose of the Regulations. For this reason, we believe that the alterations are suitable for the LSB to issue an exemption direction.

Timeframe for implementation

18. The Regulations form part of the contract between the SRA and candidates signing up for the SQE. In order to apply the changes for the benefit of future sittings of the SQE, we plan to introduce the change on 1 June 2022.

Stakeholder engagement

19. As these are minor changes which do not involve any policy changes, we have not undertaken any stakeholder engagement. We have worked closely with Kaplan, the SQE assessment provider, to agree the changes. We will publish the amended Regulations on the SQE website. These Regulations will be available to all candidates who register and book assessments after 1 June 2022.

Impacts, including impacts on persons with protected characteristics

20. We do not expect any negative impacts. In order to be fair to all candidates, the Regulations are meant to provide clarity and certainty in respect of requirements for sitting the SQE. By improving the clarity of the Regulations, we hope to help all candidates, including those with protected characteristics.

Future monitoring and evaluation of the alteration

21. We monitor all aspects of the SQE assessment on an ongoing basis. This includes a comprehensive lessons learnt process after each assessment. These amendments arise from that process. We will continue to monitor the application of the Regulations, and any issues that arise.