

Research Specification: International approaches to Legal Education and Training

Purpose

1. To develop our understanding of the regulatory requirements imposed in other jurisdictions in relation to the education and training of legal professionals and the wider legal services workforce; and to identify where potential changes to the regulatory requirements in England and Wales might affect the international standing of English & Welsh lawyers and legal qualifications and their recognition in other jurisdictions.

Background

2. The Legal Services Board (LSB) has been set up to reform and modernise the legal services market place in the interests of consumers, enhancing quality, ensuring value for money and improving access to justice across England and Wales. The LSB will achieve this pursuing our regulatory objectives¹ and providing regulatory oversight for the eight approved frontline regulators².
3. We have a specific duty under s.4 of Legal Services Act 2007 ('the Act') to assist in the maintenance and development of standards in relation to both the regulation of Authorised Persons (i.e. qualified lawyers in England and Wales) and the education and training of Authorised Persons. In addition, an effective education and training framework for the whole legal workforce (not just "authorised persons") is required to support the regulatory objectives, particularly:
 - RO4: protecting and promoting the interest of consumers
 - RO6: encouraging an independent, strong, diverse and effective legal profession
 - RO8: promoting and maintaining adherence to the professional principles.
4. Our Chairman set out the Board's analysis of current issues and its policy position in relation to education and training in the 2010 Lord Upjohn lecture to the Association of Law Teachers.³
5. The three largest approved regulators have announced their intention to carry out a review of education and training. The terms of reference for the review are attached at **Annex A**. Our role in relation to the review will primarily be to offer support and constructive challenge to the approved regulators. Our expectation is that the review should be broad in its scope, practical in its recommendations and informed by experience in other sectors and from beyond the UK.
6. We have also agreed to fill any gaps in terms of research and policy analysis, particularly on issues that would benefit from support at oversight regulator level. We have a statutory role in approving changes to the regulatory arrangements of approved regulators. We will therefore need to develop our own knowledge and capability in relation to legal education and training to

¹ See section 1 of the Legal Services Act 2007 <http://www.legislation.gov.uk/ukpga/2007/29/section/1>

² The Law Society, General Council of the Bar, Council for Licensed Conveyancers, The Institute of Legal Executives, The Chartered Institute of Patent Attorneys, The Institute of Trade Mark Attorneys, Association of Law Costs Draftsmen, Master of the Faculties.

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http://www.legalservicesboard.org.uk/news_publications/speeches_presentations/2010/de lord_upjohn lec.pdf

ensure that we are well placed to assess proposals for change and their impact on the regulatory objectives.

7. We have identified one key area which we think would benefit from early research and analysis - the approach to legal education and training in other jurisdictions (particularly the United States, major European countries and other Commonwealth countries).

Aims and Objectives

8. We would like to develop our understanding of legal education and training in other jurisdictions. In particular the research report should cover four distinct areas:
 - A detailed analysis of the regulatory requirements (e.g. in relation to syllabus, duration and delivery method of courses) in relation to legal education and training (both pre and post-initial qualification, including CPD) in:
 - the USA
 - a representative sample of major European countries
 - a representative sample of Commonwealth countries
 - The role and status of English & Welsh qualified lawyers in relation to cross-border transactions and disputes and the relative balance between brand, regulation, legal system and other factors in contributing towards the role and status of English and Welsh qualified lawyers
 - The existing arrangements for the recognition of the English & Welsh solicitor and barrister qualifications in other jurisdictions and the extent to which they exempt individuals (fully or in part) from the regulatory requirements in relation to education and training in those jurisdictions (including EU framework for mutual recognition and other EU requirements)
 - An analysis of key issues and challenges in relation to maintaining the international standing of the English and Welsh legal qualification in the context of possible reforms to the education and training framework as a result of the review.

Issues and scope

9. There are a number of issues that need to be considered, including:
 - The scope and nature of the international market for legal services
 - Lessons that can be drawn from the approach taken to education and training in other countries to inform consideration of future changes in England and Wales
 - The elements of the current education and training framework (in terms of substantive law and skills) which are relevant to a consideration of international comparability of qualifications and cross-border transactions/disputes
 - The extent to which changes to the qualification requirements for lawyers in England and Wales could undermine the attractiveness of English and Welsh qualified lawyers in the context of a globalised legal services market.
 - The consequences of potential developments in education & training in England and Wales for the international standing of English and Welsh qualifications, such as:

- i. The development of narrower specialist qualification routes
- ii. The deregulation of the undergraduate and vocational stage curriculum, with an increased focus on outcomes rather than prescribed content and delivery methods
- iii. The removal of compulsory on-the-job training (e.g. training contract/pupillage)
- iv. The separation of the award of professional title from the entitlement to carry on reserved legal activities
- v. A shift in focus of regulatory requirements in relation to education and training from regulated individuals to regulated entities
- vi. A reduction in the scope of reserved legal activities and their consequent removal from the compulsory educational curriculum

Deliverables

Output

10. The output for this research should be an executive summary together with a report. The report must be suitable for publication, although the decision on the timing of publication will remain with the LSB.
11. The researcher will also be required to run two seminars of up to two hours duration at the LSB offices during the course of the project to present emerging findings and the final report.
12. The LSB will retain ownership of the report.

Project plan

13. Tenders should include a project plan and time schedule for the work that identifies the main task and key milestones that will be used to monitor progress. The plan should be accompanied by a resource profile, giving a breakdown of the resources in person days allocated to each task.

Duration

14. The research should commence in December 2010. An interim report should be completed and submitted to the LSB by the end of February 2011. A final agreed report should be completed by end March 2011.

Legal Services Board Contact Details

15. Any queries about the research specification should be addressed to:

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TERMS OF REFERENCE FOR THE EDUCATION AND TRAINING REVIEW TO BE UNDERTAKEN BY THE SOLICITORS REGULATION AUTHORITY, BAR STANDARDS BOARD AND ILEX PROFESSIONAL STANDARDS

The review will examine:

- The educational requirements placed upon individuals entering the sector (including programmes and pathways to professional qualification) and their regulatory function.
- The requirements for continuing education for individuals and entities (including Continuing Professional Development, accreditation and other quality assurance schemes).
- The requirements placed upon those delivering approved education to individuals and entities.

The following specific questions will be asked:

- What should be the contribution of legal education and training to the delivery of the regulatory objectives set out in the Legal Services Act 2007, taking account of:
 - the likely shape of and demands on legal services by 2020 in the light of changing consumer/client demand, technological change and other factors,
 - the effects that the shape of legal services may have upon the legal and other skills demanded from different kinds of lawyers and others employed in legal services in the future,
 - the need for high quality, competitive legal services and education and training providers and high ethical standards for lawyers and legal services entities,
 - the need to promote social mobility and diversity,
 - forthcoming changes to the education sector and how these may affect legal education and training.
- How might implementation of the Legal Services Act affect legal education and training?
- To what extent (if any) should the formal regulation of legal education and training be extended to include groups other than those regulated by the Approved Regulators—for example, paralegals?
- What can or should be done to address the issue of career development and mobility between branches of the legal profession?
- What recommendations should be made to the Legal Services Board, the approved regulators and other bodies?

The regulators plan to appoint an external research team in February 2011. This review is expected to produce significant policy findings at various points before its conclusion.