



## Legal Foundation Programme

*Details on how the concepts and ideas underpinning the consultation were developed*

### 1. Introduction

This paper aims to summarise the discussions and key decisions made during the examination of the professional subjects and the meetings of the Professional Subjects Working Party (PSWP).

### 2. Group Members

**Donna McKenzie-Skene** - Vice Convenor, Board of Examiners; University of Aberdeen; Solicitor

**Charles McGregor** – Simpson & Marwick Solicitors; Solicitor

**Prof Kenneth Norrie** – Head of Law, University of Strathclyde

**Samara Shah** - Society Education and Training Committee Representative; SYLA; Solicitor

**Neil Alan Stevenson** – Deputy Director (Education and Training Department)

**David Stewart** – Morton Fraser; Solicitor

**Ken Swinton** - University of Abertay Dundee; Solicitor

**Prof Joe Thomson** - Convenor, Board of Examiners; Commissioner, Scottish Law Commission

### 3. Project Outline

The project had three key phases prior to this public consultation:

#### **Phase 1 Consultation with Board of Examiners**

The Board were asked individually to comment on their particular areas of expertise and the syllabus as a whole; a merged document of responses was created.

#### **Phase 2 Consultation with the Law Schools**

The heads of the ten Scottish law schools were contacted requesting that they liaise with their staff and students on the syllabus and respond to the Society. Nine out of the ten law schools submitted feedback and suggestions. These responses were collated.



### Phase 3 Convening of a Working Party

A working party was convened to examine the recommendations made during the two previous phases, and in light of these and other relevant evidence, seek to make recommendations which the Education and Training Committee could then consult on more widely.

It was noted that the Faculty of Advocates will have a particular interest in this area and that prior to any formal recommendation or proposals being suggested by the Education and Training Committee, the input of the Faculty would be vital.

## 4. Aims of the Group

It was noted that in delegating the task of examining the Professional Subjects and associated issues the Education and Training Committee deliberately left a wide discretion to the PSWP to define its exact role.

A detailed discussion on the exact nature of the task ended, after due consideration of the relevant issues, with several key terms of reference being agreed:

- Given the introduction of accreditation for LL.B. programmes, and taking into consideration the very different learning experiences of graduates coming through the LL.B. Route as compared with those entering the profession by other routes (i.e. the 'Society Route'), it was noted that there is no logical need for identical competencies to necessarily be regarded as "core" to both.
- The primary aim of the PSWP was to produce a Statement of core areas that students would be required to attain – this would cover both **knowledge and skills**, noting that these areas are not separate but intrinsically linked.



- That this Statement could then be implemented in two, or more, different ways:
  - **Society Route** – The Board of Examiners and Admissions Committee would work together to ensure the statement was covered through the Society Exams and the requirements of the pre-diploma training contract.
  - **LL.B. Route** – That the LL.B. providers would implement the statement through the LL.B. programmes subject to accreditation arrangements.
  - **Other routes** – these might be through commercial providers, non-LL.B. degrees or in-house training, again subject to accreditation arrangements.
  
- That there should be sufficient detail in the statement, and overall guidance, to give a clear indication of the required areas of attainment and, in particular, the reasons why those areas were required – but that the Statement should avoid being over-prescriptive.
  
- That the policy should be developed on the basis that new Regulations would be introduced to implement the proposals – and that these would create a more coherent and logical statement of the process of initial training. For example, abolishing the concept of the LL.B. exempting students from the Society's exams and replacing it with the concept of Standards which are attainable through different routes.
  
- That the overall aim was to create a document to go out to public consultation with the Education and Training Forum and other key 'stakeholders' which would contain recommendations and, in some instances, questions on which further guidance was sought from a wider group.

## 5. Group Meetings

The group met on a number of occasions, as did individual members working on particular sections. Further drafting work was done electronically and reviewed by email. Members



of the group were actively involved in other working parties and committees, ensuring ongoing communication across the various concurrent education and training projects.

## 6. What are the drivers for change?

The deliberations of the group were significantly influenced by both educational best practice and the emerging drivers in education and regulation, as set out in the outline of the consultation – available from the consultation homepage at:

<http://www.lawscot.org.uk/training/consult>

## 7. Development of a Statement of Core Requirements

There was a wide-ranging and constructive debate as to whether a core was required at all. It was agreed that:

- There was no longer a concept of the 'typical solicitor', with the result that 'core' can no longer be defined by reference to the work of the "typical solicitor".
- Instead, any concept of a 'core' should comprise of 'building blocks' which made many areas of law accessible (such as Obligations) or areas of law which pervasively affect a range of practice (such as Human Rights law), or areas of law of which all legal practitioners ought to be aware.
- That the Statement of core areas should not be seen as a prescription in terms of 'courses' or assessments – that it would be up to the Board of Examiners and the LL.B. programmes respectively to decide how best to ensure that the standards contained in the statement are attained. For accredited LL.B. providers, the ability of programmes to meet these standards would be tested every five years through the accreditation process.



# The Law Society of Scotland

- Whilst the Society had an obligation to maintain a system which was fit for its purposes and which meets its obligations, it was also important to consider external factors (the requirements of the Faculty of Advocates, other jurisdictions, and so on).
- There should be an overarching statement that all areas of law need to be taught and/or assessed in the Scottish context with, where appropriate, the specifics of 'Scots law' forming the basis of teaching and/or assessment.
- That consideration of a set of 'electives' was not ruled out, but should not be considered until a later stage in the discussions (views on this issue are welcomed in the consultation).
- It was noted that grouping subjects had two issues attached – that people could debate the groupings used, and that there was a temptation to see such groupings as 'courses' that the universities might try to directly implement. This latter point was illustrated by the example that a 'Rights' heading, incorporating Human Rights and Discrimination law might be wrongly interpreted as requiring a course on that area – rather than being taught as a pervasive theme across any programme.
- It was noted that a factor in this may be that universities might feel more confident in accreditation if their courses matched the statement's headings.
- It was noted that not grouping subjects also caused issues – it might mean those reviewing the list became more involved in questioning why areas they deemed important had not been included in a longer list and might detract from the list being seen as an essential core underpinning the requirements of becoming a 'solicitor'.



# The Law Society of Scotland

- It was considered likely that the Society would still issue a statement as to how many SCOTCAT points the teaching of the core areas of knowledge overall might constitute, but not in relation to individual elements.
- It was agreed that a 'grouped list' might be the preferred option of the working party at this stage and that, when the further detail had been added, the working party could review the position – the list currently presented in the consultation is a 'grouped' list.
- It was agreed that at least three overarching statements should be added to the list of knowledge areas; that the list related to the law as practised and understood in Scotland, that the items on the list were NOT equally rated and that reference should be to the narrative to gain understanding of what was required, and that the list was a statement of core knowledge and NOT a list of required courses.

## **8. Development of a Statement of Core Requirements - SKILLS**

The group discussed and agreed the following issues:

- The skills statement must be relevant to the practice of law in Scotland, and the various forms of practice.
- The skills statement had to contain skills that were essential prior to entry into the subsequent stage of qualification (the Diploma in Legal Practice) and/or that were not covered elsewhere in the route to qualification as a solicitor.
- The statement should not seek to be a complete statement of the skills that form part of an LL.B. programme, but be an articulation of what skills the profession has a valid interest in stipulating a requirement for at an appropriate stage in the training.



# The Law Society of Scotland

- That the skills statement would apply to both main routes to Diploma entry (the LL.B. degree and the pre-diploma training contract) BUT that they may be taught and/or assessed in different ways in these two periods.
- That because of these dual routes it was useful to have a statement of skills from the profession, notwithstanding the fact that this may be less comprehensive than the skill set that was likely to be taught as part of the LL.B. because of other factors