



Decision Notice issued under Part 3 of Schedule 4 to the Legal Services Act 2007

Bar Standards Board's application for approval of amendments to regulatory arrangements in respect of pupillage matters

The Legal Services Board (LSB) has approved the application by the Bar Standard Board's (BSB) for changes to its arrangements in respect of pupillage matters. This Notice sets out the basis for the LSB's approval and the decision taken, including a brief description of the changes.

Introduction

1. The LSB is required by Part 3 of Schedule 4 to the Legal Services Act 2007 (the Act) to review and approve or reject the Regulatory Arrangements of the Approved Regulators. The Bar Council is an Approved Regulator and whose regulatory functions are carried out through its regulatory arm the BSB.
2. Paragraph 25 of Schedule 4 explains that the LSB must approve a proposed change to the Regulatory Arrangements unless we are "...satisfied that..." the approval would fall within one or more of the criteria specified in sub paragraph 25(3) (and listed in the footnote below)¹. If the LSB is not satisfied that one or more of the criteria are met, then it must approve the application in whole, or at least the parts of it that can be approved when only part of the application meets the criteria.
3. As provided for by paragraphs 20(1) and 23(3) of Schedule 4 the LSB has made rules about how the application to alter the Regulatory Arrangements must be made including the contents of that application. The rules highlight the applicant's obligations under section 28 of the Act to have regard to the Better Regulation Principles. The rules also require that the applicant provides information about the nature and effect of each proposed change and of appropriate consultation

¹The Board may refuse the application only if it is satisfied that—(a) granting the application would be prejudicial to the Regulatory Objectives, (b) granting the application would be contrary to any provision made by or by virtue of the Act or any other enactment or would result in any of the designation requirements ceasing to be satisfied in relation to the approved regulator, (c) granting the application would be contrary to the public interest, (d) the alteration would enable the approved regulator to authorise persons to carry on activities which are reserved legal activities in relation to which it is not a relevant approved regulator, (e) the alteration would enable the approved regulator to license persons under Part 5 to carry on activities which are reserved legal activities in relation to which it is not a licensing authority, or (f) the alteration has been or is likely to be made otherwise than in accordance with the procedures (whether statutory or otherwise) which apply in relation to the making of the alteration.

undertaken. Sub paragraph 25 (3)(f) requires that each proposed alteration has been made or is likely to be made in accordance with the procedures which apply in relation to making of the alteration. This includes the LSB rules.

4. The LSB will approve Regulatory Arrangements in so far that they appear to achieve their intended outcome and satisfy the sub paragraph 25(3) criteria. Most notably there must be no adverse impact on the Regulatory Objectives overall and the alterations and the process by which they have been produced must be consistent with Better Regulation Principles.
5. We confirmed receipt of the BSB's application for approval of amendments to its Regulatory Arrangements in respect of pupillage matters on 28 March 2011. This is the decision notice in relation to that application. The chronology for handling of this application can be found towards the end of this decision notice.

Decision

6. The application comprised of eight proposed changes regarding the BSB's pupillage arrangements. Details of the proposed changes can be found the relevant annexes at the end this decision notice.
7. Following minor clarification, we considered that five of the eight proposed changes could be approved without detailed further enquiry. The five changes are:
 - Item 1 – change of name of the “Bar Vocational Course” to the “Bar Professional Training Course” (BPTC), *passim*
 - Item 3 – removal of the minimum length of time for a Qualifying Degree and for a Qualifying Law Degree, Bar Training Regulations (BTR) 21 (Annex B)
 - Item 4 – allowing to undertake the whole of their pupillage with an Approved Training Organisation and an accredited supervisor, in any Member State of the European Union, BTR 31 (Annex C)
 - Item 6 – regarding the Inns' Qualifying Sessions for Specially Qualified Applicants, BTR 62 (Annex E)
 - Item 8 – raising the minimum amount of the pupillage award from £10,000 to £12,000 a year, Annex R of the Code of Conduct (Annex G) to reflect changes in statutory minimum wages.
8. Following further clarification, we considered that the remaining three changes (items 2, 5 and 7) could be approved.

Item 2 – regarding time limits for commencing the Bar Course, BTR 12 and Schedule A (Annex A)

9. This change proposes that a person should be required to commence the Vocational Stage (ie the BPTC) within five years of joining an Inn and complete it within 10 years of joining an Inn.
10. We sought clarification why the five and 10 year time limits are considered to be the appropriate time limits. The BSB advised that the proposed time limit of five

years relates to the time after which a Qualifying Law Degree is considered to be “stale”, as stated in paragraphs 4.7 to 4.10 of its Academic Stage Handbook.

11. The proposed time limit of 10 years relates to the maximum time permitted to complete the BPTC (up to two years, part-time) and an allowance of three years for extenuating circumstances (eg re-sitting exams, illness, etc).
12. We were also concerned that the application stated that “it is acknowledged that the status of those who failed to comply with these rules might be difficult to determine. However, it should be noted that the Inns’ rules do not prevent an applicant whose membership lapses from reapplying for membership. The Inns recognise [that] mechanisms will need to be developed to deal with any persons affected.”
13. Our concern was that there was little benefit in approving a proposed regulatory arrangement if there was no mechanism to enforce the arrangement. The BSB confirmed that the Inns have acknowledged that they would need to monitor this particular aspect and that it will require the Inns to make reference to any such students as part of the annual monitoring on the Inns’ educational activities. The BSB anticipates that the number of students that may exceed the time limits is likely to be extremely small. Students’ memberships with the Inns will cease, on the expiration of the relevant period (five or 10 years), if they fail to comply with this requirement.

Item 5 – allowing the regulator broad discretion to lay down and change the criteria and guidelines for an Approved Training Organisation (ATO), BTR 37 (Annex D)

14. The proposed change would amend BTR 37 to allow the BSB the discretion to amend the criteria for an ATO. This would give the BSB the flexibility to amend the criteria to encourage the offering of pupillages, particularly by the Employed Bar and commercial organisations. The BSB anticipates that the proposed change may make it easier for organisations to be approved, and hence, for the number of pupillages to be increased.
15. The BSB envisages that minor amendments may be made to the criteria and that the Pupillage Handbook would be updated annually at each autumn, without recourse to the LSB.
16. We are content for the BSB to make minor amendments to BTR 37 without recourse to the LSB, provided that the BSB can satisfy itself that each time it makes any changes to the criteria and guidelines that they fall within Exemption Direction 1 – alterations falling below a de minimis line.²
17. However, if the proposed changes to the criteria and guidelines do not fall within the de minimis exemption, the BSB will be required to apply for approval under the process outlined in Part 3 of Schedule 4 to the Act, or request a specific exemption for each change.

² Refer Exemption Direction 1 – Alterations falling below a de minimis line (paragraph 19(3) and (4) of Schedule 4 direction), 30 December 2009, http://www.legalservicesboard.org.uk/news_publications/latest_news/2009/pdf/exemption_direction_1_alterations_falling_below_a%20de_minimus_line_final.pdf

Item 7 – amendments to make it clear that the BSB has a residual discretion to refuse to accept the nomination of a barrister as a pupil supervisor, Schedule C of the BTR (Annex F)

18. In the application, the BSB stated that “the Pupillage Working Group envisaged that there was a possibility (albeit very remote) that a pupil supervisor might be approved by his/her Inn, but then not accepted on the register by the BSB. This could be related to misconduct with regard to the Bar Council/BSB, for example.”
19. We sought further details from the BSB regarding what matters that it would consider if it were to reject a pupil supervisor nomination from an Inn. The BSB advised that it may not approve a pupil supervisor nominee if the BSB is in possession of information that confirms that:
- the barrister has been the subject of disciplinary findings
 - the barrister has been found guilty of misconduct
 - there are unresolved matters relating to misconduct issues (which would have to be resolved)
 - complaints have been made against the barrister with regard to previous interaction with pupils in any way
 - the barrister is unsuitable for any reason to act as a pupil supervisor.
20. The BSB also advised that there may be a range of scenarios where it may reject a pupil supervisor nomination. For example, where there are pending disciplinary proceedings against a barrister, or if issues that have arisen as a result of chambers’ monitoring, of which the Inn is unaware, and, because of the seriousness of the allegations, the BSB decides that it would not be appropriate for the barrister to become a pupil supervisor until the proceedings are complete.
21. The BSB also noted that with regard to removing a pupil supervisor’s name from the register that the Regulations make it explicit that it is the responsibility of the BSB, and not the Inns.

Chronology

- The LSB received an application from the BSB for approval of amendments to its pupillage arrangements on 28 March 2011.
- The 28-day initial decision period for considering the application ended on 24 April 2011.
- On 20 April 2011, the LSB issued an Extension Notice to extend the initial 28-day decision period until 25 June 2011.
- This Decision Notice will be issued to the BSB on 25 May 2011.
- This Decision Notice will be published on the LSB’s website on 26 May 2011.

Chris Kenny, Chief Executive
Acting under delegated authority granted by the Board of the Legal Services Board

25 May 2011

Annex A - Item 2 – regarding time limits for commencing the Bar Course, BTR 12 and Schedule A

Set out below are proposed changes (underlined) to BTR 12 and Schedule A:

BTR12 *The Inn must admit the applicant if the applicant:*

- a) *is eligible for admission to an Inn and has given the undertaking on the admission declaration (Schedule A) to commence the Vocational Stage within five years of admission to an Inn and complete that Stage within ten years of admission; and*
- b) *has complied with Regulation 9.*

Otherwise the Inn must reject the application and inform the applicant of its reasons for doing so.

Schedule A – amendment to the form (to be signed and dated by applicants)

8. *I have read and understood the terms of the further Declaration which I will be required to sign before I can be called to the Bar.*
9. *I will inform the Inn of any change to my name or address.*
10. *I will commence the Vocational Stage within five years of admission to the Inn and complete that Stage within ten years of admission on the understanding that if I fail to comply with either of those requirements my membership of the Inn will cease on the expiration of either period.*

Annex B - Item 3 – removal of the minimum length of time for a Qualifying Degree and for a Qualifying Law Degree, BTR 21

Set out below are proposed changes (in ~~strikeout~~) to BTR 21:

BTR 21 *For the purpose of Regulation 20(a), unless the Board on an application showing good grounds permits otherwise*

a) the required standard is first or second class honours

b) ~~the minimum period is three years.~~

Annex C - Item 4 – allowing to undertake the whole of their pupillage with an Approved Training Organisation and an accredited supervisor, in any Member State of the European Union, BTR 31

Set out below are the proposed changes (underline and strikeout):

BTR 31 *Except with the written permission of the Board, the non-practising period of pupillage must be undertaken:*

(a) in ~~England and Wales~~ a Member State of the European Union; and

(b) in a continuous period of six months.

Annex D - Item 5 – allowing the regulator broad discretion to lay down and change the criteria and guidelines for an Approved Training Organisation, BTR 37

Set out below are the proposed changes (underline and strikeout):

BTR37 ~~The Board~~ may authorise any will designate an organisation as an Approved Training Organisation subject to such terms as the Board may from time to time determine if it is satisfied:

~~(a) that one or more registered pupil supervisors who are available to provide pupillage training practise in the organisation; and~~

~~(b) that the organisation has made proper arrangements for dealing with pupils and pupillage in accordance with the Code of Conduct.~~

Annex E - Item 6 – regarding the Inns' Qualifying Sessions for Specially Qualified Applicants, BTR 62

Set out below are the proposed changes (underline):

BTR62 *Where the Board exempts a person from the Vocational or Professional Stage of training, it may also:*

(a) grant exemption in whole or in part from the requirement to attend Qualifying Sessions; and

(b) specify the period within which any requirement to attend Qualifying Sessions must be fulfilled, which may be a period ending after the person concerned has been called to the Bar and in the case of a Specially Qualified Applicant is usually a period of three years during which the Applicant must attend six Qualifying Sessions unless special circumstances apply.

Annex F - Item 7 – amendments to make it clear that the BSB has a residual discretion to refuse to accept the nomination of a barrister as a pupil supervisor, Schedule C of the BTR

Set out below are the proposed changes (underline):

C2 *The Board may enter a barrister on the register of approved pupil supervisors if the barrister is approved by an Inn of which the barrister is a member.*

2A *The Board may refuse to enter a barrister on the register of approved pupil supervisors if the Board finds that the barrister is unsuitable for any reason to act as a pupil supervisor.*

2B *If the Board refuses to enter a barrister on the register of approved pupil supervisors, it will notify the barrister and the Inn which approved the barrister as a pupil supervisor of its decision and of the reasons for it.*

Annex G - Item 8 – raising the minimum amount of the pupillage award from £10,000 to £12,000 a year, Annex R of the Code of Conduct

Set out below are the proposed changes (underline and strikeout):

1. *The members of a set of chambers must pay to each non-practising chambers pupil by the end of each month of the non-practising six months of his pupillage no less than:*

(a) ~~£833.33~~ £1000.00; plus

(b) *such further sum as may be necessary to reimburse expenses reasonably incurred by the pupil on:*

(i) travel for the purposes of his pupillage during that month; and

(ii) attendance during that month at courses which he is required to attend as part of his pupillage.

2. *The members of a set of chambers must pay to each practising chambers pupil by the end of each month of the practising six months of his pupillage no less than:*

(a) ~~£833.33~~ £1000.00; plus

(b) *such further sum as may be necessary to reimburse expenses reasonably incurred by the pupil on:*

(i) travel for the purposes of his pupillage during that month; and

(ii) attendance during that month at courses which he is required to attend as part of his pupillage; etc