

SCREENING FORM

Date of Screening	1 July 2011
Assessor Name & Job Title	Kay Minnis/Kuljeet Bath, Senior Policy Officers
Policy/Function to be Assessed	Authorisation to Practise Regime – New Practising Certificate Rules
Aim/Purpose of Policy	<p>The BSB was created by the Bar Council to undertake its regulatory role. The BSB acts in the public interest and aims to inform the consumer about those who are eligible to provide legal services.</p> <p>Developing an authorisation to practise regime meets the Bar Standards Board regulatory objectives of: 1(a) protecting and promoting the public interest 1(d) protecting and promoting the interests of consumers 1(h) promoting and maintaining adherence to the professional principles of the Legal Services Act 2007.</p> <p>The Legal Services Act 2007 and in particular section 13(2) requires individuals wishing to provide reserved legal activities to be authorised to do so by the relevant approved regulator. Rules and a system are already in place which authorises barristers to practise. The BSB consulted on changes to the authorisation regime in March 2010. The outcomes of the consultation were approved by the BSB in November 2010.</p> <p>The new rules were included in the consultation on the proposed new Code of Conduct and the final draft of the rules relating to authorisation to practise were approved by the BSB in July 2011 and pending approval by the LSB, barristers will have to apply for authorisation to practise for practising certificates valid from the 1 April 2012.</p> <p>As a result of this new regime and rules, when applying for a practising certificate, barristers will be required to provide or confirm certain basic information about themselves and their practice; to confirm that they are covered by their insurance, to state whether they have complied with the CPD rules and to pay the relevant fee.</p> <p>Under the new regime there will be five different types of practising certificate:</p> <ol style="list-style-type: none"> 1. A full practising certificate for barristers who have satisfactorily completed (or have been exempted from the requirement to complete) 12 months of pupillage or who were called before 1 January 2002

	<p>and have been granted full rights of audience following an application under the transitional provisions in rule 1102.</p> <ol style="list-style-type: none"> 2. A provisional practising certificate for pupils who have satisfactorily completed (or have been exempted from the requirement to complete) the non-practising period of 6 months of pupillage. 3. A limited practising certificate for barristers called to the Bar before 1 January 2002 who have no or limited rights of audience. 4. A registered European lawyer's practising certificate if you are a registered European lawyer; or 5. A temporary practising certificate where an application for a review has been made.
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Do you consider the policy to have an adverse impact on equality?

Gender	Yes	<input checked="" type="checkbox"/>	No	<input type="checkbox"/>
Race	Yes	<input checked="" type="checkbox"/>	No	<input type="checkbox"/>
Disability	Yes	<input type="checkbox"/>	No	<input checked="" type="checkbox"/>
Sexual orientation	Yes	<input type="checkbox"/>	No	<input checked="" type="checkbox"/>
Religion	Yes	<input type="checkbox"/>	No	<input checked="" type="checkbox"/>
Age	Yes	<input type="checkbox"/>	No	<input checked="" type="checkbox"/>
Gender reassignment	Yes	<input type="checkbox"/>	No	<input checked="" type="checkbox"/>
Pregnancy/maternity	Yes	<input checked="" type="checkbox"/>	No	<input type="checkbox"/>

If yes, is there any evidence to support this?	<p>Disability</p> <p>There is no evidence to suggest that the Practising Certificate Rules and Code amendments will have an adverse impact upon disability. The policy decision which requires all barristers to complete authorisation online, is subject to a separate impact assessment.</p>
If no, are your reasons for this?	<p>Gender</p> <p>There may be an adverse impact on gender, for those</p>

	<p>barristers who have not held a practising certificate for 5 or completed pupillage 5 or more years ago.</p> <p>The Practising Certificate Rules require these barristers to complete further training as may be imposed by the Bar Standards Board before they can return to practice.</p> <p>Statistics show that there are a greater proportion of women who have not returned to practice or commenced practice after completing pupillage.</p> <p>Completing further training, maybe more difficult for those women who have been out of practice due to maternity and childcare commitments, as they may be unable to dedicate the sufficient amount of time needed to complete further training. There may also be costs implications in completing the training.</p> <p>There may also be an impact in terms of increased administrative burdens in the first year of the new arrangements when some barristers will need to provide additional information to enable the BSB to assess their eligibility for practising certificates. This applies particularly to barristers who have not done pupillage, a group which may include a higher proportion of women. Thereafter the new arrangements should be simple to operate for all barristers and there is no evidence that they will have an adverse impact on gender</p>
	<p>Race</p> <p>There may be an adverse impact on race, similar to that on gender, in terms of increased administrative burdens in the first year. In 2009-10, 10% of the practising bar was recorded as being of BME origin. Subsequent to the initial application, the new arrangements should be simple to operate for all barristers and there is no evidence that they will have a continuing adverse impact on race.</p> <p>It should be noted, however that any Chambers or organisation will have the ability to submit bulk returns which may in turn negate the administrative burden.</p>
	<p>Sexual orientation</p> <p>There is no evidence to suggest that the Practising Certificate Rules and Code amendments will have an adverse impact on sexual orientation.</p>
	<p>Religion</p> <p>There is no evidence to suggest that the Practising Certificate Rules and Code amendments will have an</p>

	adverse impact on religion.
	<p>Age</p> <p>There is no evidence to suggest that the Practising Certificate Rules and Code amendments will have an adverse impact on specific age groups.</p>
	<p>Gender reassignment</p> <p>There is no evidence to suggest that the Practising Certificate Rules and Code amendments will have an adverse impact on gender reassignment.</p>
	<p>Pregnancy/maternity</p> <p>It is possible that the policy could have an adverse effect on barristers who have taken maternity leave and therefore find it more difficult to complete the CPD requirement.</p> <p>The Electoral Reform Services Survey of Barristers Changing Practice Status 2001 – 9, prepared for: General Council of the Bar, March 2011, shows that 28% of women leaving the bar compared to 3% of men gave childcare responsibilities as their reason for leaving the bar from 2000-9. In 2009, 24% of women leaving the bar stated childcare responsibilities as their reason for leaving. The rules may therefore have an adverse effect on those barristers returning to practice after 5 years due to pregnancy and extended maternity leave. It should be noted, however that this data does not confirm whether those leaving the bar for childcare reasons intend to return within 5 years.</p> <p>Any new training requirements for those barristers who have been out of practice for 5 years or more would be subject to an impact assessment.</p>

POLICY ANALYSIS

<p>What are the (potential) barriers to equality arising from this policy?</p> <p>What evidence supports the existence of such barriers?</p>	<p>It is possible that the introduction of the new Practising Certificate rules may have minor adverse impacts on some groups.</p> <p>The <u>greatest impacts are likely to result from rule 2.3 and increased administration in comparison to the current system.</u></p> <p><u>Rule 2.3</u> Rule 2.3 of the Practising Certificate Rules applies to anyone who has been out of practice for 5 years and wants to return to practice. The rule requires them to complete training, as imposed by the BSB prior to returning to practise.</p> <p>The statistics in the tables below give an indication of the number of self-employed barristers who have not returned to practice within 5 years of ceasing (Table 1) or since completion of pupillage (Table 2).</p> <p style="text-align: center;"><u>Table 1</u></p> <table border="1" data-bbox="363 936 1398 1171"> <thead> <tr> <th><u>Ceased practice</u></th> <th><u>Return by¹</u></th> <th><u>Total Barristers</u></th> <th><u>% Male²</u></th> <th><u>% Female²</u></th> </tr> </thead> <tbody> <tr> <td>1/1/01 – 31/12/01</td> <td>01/01/06 – 31/12/06</td> <td>121</td> <td>0.7%</td> <td>1.0%</td> </tr> <tr> <td>1/1/02 – 31/12/02</td> <td>01/01/07 – 31/12/07</td> <td>104</td> <td>0.6%</td> <td>0.8%</td> </tr> <tr> <td>1/1/03 – 31/12/03</td> <td>01/01/08 – 31/12/08</td> <td>200</td> <td>1.1%</td> <td>1.7%</td> </tr> <tr> <td>1/1/04 – 31/12/04</td> <td>01/01/09 – 31/12/09</td> <td>164</td> <td>0.8%</td> <td>1.5%</td> </tr> <tr> <td>1/1/05 – 31/12/05</td> <td>01/01/10 – 31/12/10</td> <td>201</td> <td>1.1%</td> <td>1.7%</td> </tr> </tbody> </table> <p style="text-align: center;"><u>Table 2</u></p> <table border="1" data-bbox="363 1267 1398 1503"> <thead> <tr> <th><u>Pupillage complete</u></th> <th><u>Return by¹</u></th> <th><u>Total Barristers</u></th> <th><u>%Male²</u></th> <th><u>% Female²</u></th> </tr> </thead> <tbody> <tr> <td>1/1/01 – 31/12/01</td> <td>01/01/06 – 31/12/06</td> <td>66</td> <td>0.3%</td> <td>0.6%</td> </tr> <tr> <td>1/1/02 – 31/12/02</td> <td>01/01/07 – 31/12/07</td> <td>55</td> <td>0.3%</td> <td>0.5%</td> </tr> <tr> <td>1/1/03 – 31/12/03</td> <td>01/01/08 – 31/12/08</td> <td>19</td> <td>0.1%</td> <td>0.2%</td> </tr> <tr> <td>1/1/04 – 31/12/04</td> <td>01/01/09 – 31/12/09</td> <td>27</td> <td>0.2%</td> <td>0.2%</td> </tr> <tr> <td>1/1/05 – 31/12/05</td> <td>01/01/10 – 31/12/10</td> <td>39</td> <td>0.1%</td> <td>0.4%</td> </tr> </tbody> </table> <p>It is difficult to predict the probability of these barristers returning to practice in the future, but as the table indicates statistically there are a greater number of female barristers who have been out of practice and are eligible to return.</p> <p>This rule will not come into force until 1 April 2014 as consideration still needs to be given as to the type of training a barrister will be required to undertake, who will provide this and any associated costs. Until the further training</p>	<u>Ceased practice</u>	<u>Return by¹</u>	<u>Total Barristers</u>	<u>% Male²</u>	<u>% Female²</u>	1/1/01 – 31/12/01	01/01/06 – 31/12/06	121	0.7%	1.0%	1/1/02 – 31/12/02	01/01/07 – 31/12/07	104	0.6%	0.8%	1/1/03 – 31/12/03	01/01/08 – 31/12/08	200	1.1%	1.7%	1/1/04 – 31/12/04	01/01/09 – 31/12/09	164	0.8%	1.5%	1/1/05 – 31/12/05	01/01/10 – 31/12/10	201	1.1%	1.7%	<u>Pupillage complete</u>	<u>Return by¹</u>	<u>Total Barristers</u>	<u>%Male²</u>	<u>% Female²</u>	1/1/01 – 31/12/01	01/01/06 – 31/12/06	66	0.3%	0.6%	1/1/02 – 31/12/02	01/01/07 – 31/12/07	55	0.3%	0.5%	1/1/03 – 31/12/03	01/01/08 – 31/12/08	19	0.1%	0.2%	1/1/04 – 31/12/04	01/01/09 – 31/12/09	27	0.2%	0.2%	1/1/05 – 31/12/05	01/01/10 – 31/12/10	39	0.1%	0.4%
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¹This is the date that a barrister would have to have returned to practice by, in order to not be required to complete additional training.

²There are approximately 10011 (65.6%) male barristers and 5259 (34.4%) female barristers; this figure represents the % of male and female barristers who have not returned to practice or commenced practice following pupillage within 5 years.

requirements are decided it is difficult to fully assess the impact of this rule.

Administrative requirements

In comparison to the current arrangements for renewals, there may be an impact in terms of additional administrative requirements in the first year of the new arrangements, as some barristers will need to provide additional information to enable the BSB to assess their eligibility for practising certificates.

The current process for annual renewal is less formal than the new proposals. Each year, the Bar Council's Records Office sends a notice to all practising barristers reminding them that they need to pay an annual fee to renew their practising certificates. Barristers can renew their practising certificates by paying the requisite fee and there is no obligation to provide evidence of ongoing compliance with the practising requirements proposed for the new regime. Such additional obligations may have some impact on sole practitioners and smaller organisations, which may not have clerks or other staff to deal with the administrative side of their practice. As a result the proposals are likely to impact more on those with more limited means such as sole practitioners, who are often, but not exclusively of BME origin. According to the Bar Barometer, in 2009-10, 10% of the practising bar is of BME origin.

Despite these potential impacts the more formal approach to authorisation can be justified as it is more closely aligned with the requirements set out in the 2007 Act and also it is in the public interest for the authorisation process to be more robust and transparent. Furthermore after the initial year of the new regime, the new arrangements should be simple to operate for barristers and there is no evidence to suggest they will continue to have an adverse impact on gender or race.

Linking of CPD to authorisation

The rules give the BSB discretion not to renew a barrister's practising certificate if he has not complied with the relevant CPD requirements. This proposal may have a number of equality impacts; however it is being examined as part of the CPD review and will not be implemented until that review has concluded. In the interim the BSB will require barristers to state in their applications whether or not they have complied with the CPD requirements and to state any reasons for failure. Any disclosed failure will be followed up in the current way i.e. through the own motions complaints process.

A draft EIA has been completed for the CPD review and can be found at annex D of the following link:

<http://www.barstandardsboard.org.uk/consultations/OpenConsultations/CPDconsultation/>

The requirement for additional training for all barristers who have been out of practice for over 5 years, ensuring that their knowledge and skills are up-to-date when they return to practice can be justified by protecting consumers which is in the public interest. The particular needs of those returning to work who have caring responsibilities will be considered when establishing the

	training requirements.
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Action Planning

Recommendations and actions required to reduce/remove barrier	Person Responsible	Deadline
Continue to monitor the exit data	Kay Minnis/Kuljeet Bath, Senior Policy Officers, E&D Department	Post 1 April 2011