



## Summary of Decision

This document provides a summary of the decision of the Legal Services Board (“**LSB**”). It is not and should not be taken as a formal part of the LSB’s decision notice under the Legal Services Act 2007 (“**the Act**”).

### Purpose of notice

*The purpose of this summary document is to provide a high level and accessible synopsis of the LSB’s decision. Readers are recommended to read the formal decision notice itself for further detail.*

The LSB’s decision to grant the application in full from the Bar Standards Board (BSB) to make changes to its regulatory arrangements to introduce new Part 4 Bar Qualification Rules.

### Alterations that are being approved by this decision

- The introduction of different routes to authorisation (managed pathways) to provide greater flexibility in the delivery of training and provision of pupillage.
- Changes in the regulatory oversight of call to the Bar by the Inns of Court.

These overarching changes are represented in alterations to make new Part 4 Bar Qualification Rules that encompass:

- Application of the rules
- Purpose of the rules
- Routes to qualification as a barrister and authorised person
- Exemptions
- Temporary call to the Bar of Qualified Foreign Lawyers
- Authorised Education and Training Organisations
- Review and Appeals
- Definitions (which are set out in Part 6 of the Bar Qualification Rules).

26 February 2019

## Decision notice

### **The Bar Standards Board's application for the approval of amendments to the BSB Handbook to introduce new Part 4 Bar Qualification Rules.**

The Legal Services Board (“**LSB**”) has granted an application from the Bar Standards Board (“**BSB**”) for approval of amendments to its regulatory arrangements to introduce new Part 4 Bar Qualification Rules.

1. This decision notice sets out the decision taken, including a brief description of the changes. The chronology for the LSB's handling of this application is also set out at the end of this decision notice.
2. The LSB is required by Part 3 of Schedule 4 to the Legal Services Act 2007 (“**the Act**”) to review and grant or refuse applications by approved regulators to make alterations to their regulatory arrangements. The Bar Council is an approved regulator and the BSB is the regulatory arm to which the Bar Council has delegated its regulatory functions. The notes at page 13 of this notice explain the statutory basis for the decision.

## Proposed alterations

3. There are two broad policy changes reflected in the alterations, which emerged from the BSB's Future Bar Training (FBT) consultations and reforms:
  - The introduction of different routes to authorisation (managed pathways) to provide greater flexibility in the delivery of training and provision of pupillage.
  - Changes in the regulatory oversight of call to the Bar by the Inns of Court.
4. The proposed regulatory arrangements will apply to all individuals who wish to be called to the Bar by an Inn of Court and authorised as a practising barrister by the BSB, and to any education and training provider wishing to become authorised by the BSB to deliver training.
5. The new rules set out at a high level:
  - the components of training required for call to the Bar
  - the requirements for issuing practising certificates
  - authorisation of organisations to provide vocational training and pupillage
  - exemption arrangements
  - arrangements for temporary call to the Bar

- appeal procedures.
6. Some of these provisions carry over the existing rules, others have been deleted, or removed and reformulated in external documents referenced in the new rules. The current arrangements and what is changing are summarised below.

### Introduction of managed pathways

#### *Vocational training*

7. Under the current arrangements there is a single pathway to authorisation, in the form of vocational training through the Bar Professional Training Course (BPTC). The BPTC is a postgraduate vocational course designed to prepare prospective barristers for pupillage and practise, focussing on legal knowledge and skills.
8. The proposals make changes to the vocational training, introducing a new “Managed Pathways” approach. The BSB say this is a move away from the more prescriptive approach of the current BPTC. The aim, according to the BSB, is to enable training providers, who are called Authorised Education and Training Organisations (AETOs) under the new rules, to offer different training pathways to become authorised as a barrister, limited to the four pathways set out in the BSB’s Authorisation Framework<sup>1</sup>. AETOs will need to be approved by the BSB, and they will need to meet the requirements of the Authorisation Framework. The increased flexibility (within the four training pathways) means that AETOs may, for example, offer short courses, and thus increase affordability for students.
9. The BSB will continue to specify the curriculum and assessment for vocational training. In this regard, the existing requirements that students must complete a choice of specialised courses, in addition to the core mandatory ones, have been removed from the rules. Although AETOs will still be able to offer specialised options if they wish.

#### *Pupillage*

10. Associated with the greater flexibility of vocational training through managed pathways are the proposed new arrangements for the provision of work-based learning by an AETO, defined as ‘pupillage’ under the new rules. The proposals allow for pupillage to be provided by AETOs, extending the approved routes beyond the current ones and with a greater focus on outcomes. The changes are intended to give AETOs flexibility to develop new and less prescriptive work-based training programmes.
11. Existing Pupillage Training Organisations (which mainly include chambers) that train pupils will also be required to apply for authorisation under this Authorisation

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<sup>1</sup> The BSB [Authorisation Framework](#) sets out the minimum requirements for organisations seeking authorisation by the BSB to deliver training. The four training pathways are: i) Three step pathway – academic component, followed by vocational and then by pupillage/work based components ii) Four step pathway – academic component, followed by vocational component in two parts, followed by pupillage or work based component iii) Integrated academic and vocational pathway – combined academic and vocational components followed by pupillage or work-based component and iv) Apprenticeship pathway - combined academic, vocational and pupillage or work based components.

Framework. They will need to provide evidence about how they will ensure that their training programme enables pupils to meet each of the Professional Statement competences to the threshold standard.

12. Requirements for pupillage duration, delivery and supervisor/pupil ratio under the existing rules have been deleted. Instead the BSB says it will set training outcomes to be delivered by the AETOs in the Professional Statement<sup>2</sup> and will issue guidance published by the BSB as part of the Bar Training Handbook.

#### BSB regulatory oversight of call to the Bar by the Inns of Court

13. Under the Act, a barrister is defined as a person called to the Bar of England and Wales by one of the four Inns of Court. To be issued with a practising certificate, and therefore be authorised by the BSB, a barrister must also comply with BSB requirements. However, the BSB consider that there needs to be greater BSB regulatory oversight and assurance in relation to call to the Bar. It proposes to achieve this through a Memorandum of Understanding (MoU) between the BSB, the Council of the Inns of Court (COIC) and each of the Inns of Court. The rules that are approved as part of this decision notice set out the overarching regulatory arrangements within which the MoU will operate.

#### *Delivering Qualifying Sessions*

14. Student members of the Bar are required to complete Qualifying Sessions with an Inn of Court before they can be called to the Bar. As a result of its consultations, the BSB concluded that the Qualifying Sessions should be retained. The BSB said it recognised the benefits in promoting a 'community of practice' that could expose pupils to more experienced practitioners and judges, which could help promote and embed ethical behaviour and provide pastoral support and care. The BSB considered the Inns were uniquely placed to promote this community of practice which could not be replaced by an alternative provider. The BSB says it will develop a framework to strengthen support received by students during this vocational component.

#### *Fit and proper person tests and student conduct*

15. The BSB considered whether certain roles undertaken by the Inns of Court might be better done directly by the BSB (for example, fit and proper person and Disclosure and Barring Service checks and student conduct). It concluded that it would be disproportionate for the BSB to do these itself as it was not an effective use of its resources, and the point of entry to the profession is generally seen as call to the Bar (after which individuals are formally regulated by the BSB.)
16. Whilst the BSB proposes to maintain the role of the Inns in the above areas, it did conclude that there was a need for the BSB to enhance its role in setting minimum standards and requirements for delivering Qualifying Sessions, overseeing student conduct and administering fit and proper person checks. The BSB consider there is also a need for greater BSB oversight and assurance in relation to call to the Bar.

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<sup>2</sup> [The Professional Statement](#) describes the knowledge, skills and attributes that a newly qualified barrister should have when issued with a Full Practising Certificate.

This is to be achieved through a MoU between the BSB, COIC and each of the Inns of Court. The MoU, a final version of which the LSB had sight of as part of its assessment, sets out the mutual obligations between the BSB, COIC and Inns (in respect of Qualifying Sessions, overseeing student conduct and administering fit and proper person checks). It also describes how the Inns' activities will be planned and monitored in accordance with the four principles of the FBT reforms (encouraging greater flexibility, improving accessibility, improving affordability and maintaining high standards), and the better regulation principles.

17. Finally, the MoU will set out the arrangements for the BSB to audit and supervise the Inns' activities, in order that there are clearly stated obligations to students on the part of both parties, and to ensure appropriate mechanisms are in place to achieve this. This approach, the BSB says, seeks to ensure that those activities that form part of its regulatory arrangements are subject to proper (and proportionate) oversight by the BSB. The MoU does not cover COIC's activities with the Bar Tribunal and Adjudication Service (BTAS) or the operation of the Inns Conduct Committee (ICC). Such service level arrangements are set out separately. The MoU will be formally signed by all the parties before the new regulations come into force.

### **Presentation of the rules**

18. The new Bar Qualification Rules Part 4, attached to this notice, comprise of the following sections:

- Application of the rules
- Purpose of the rules
- Routes to qualification as a barrister and authorised person
- Exemptions
- Temporary call to the Bar of Qualified Foreign Lawyers
- Authorised Education and Training Organisations
- Review and Appeals
- Definitions (which are set out in Part 6 of the Bar Qualification Rules).

### **Key issues considered in the assessment**

19. The LSB broadly welcomes these changes which enable a degree of liberalisation of the BSB's regulation of education and training, and gives a greater role for the BSB in the regulation of pupillage. During the assessment process we sought clarification and assurances on many aspects of the reforms, bearing in mind the refusal criteria in the Act against which we must make our decision. The following sections provide a summary of the issues we raised and the BSB responses to these.

## AETOs and flexibility in training options

20. A key component of the BSB changes in the managed pathways is to increase the flexibility for AETOs to offer different training programmes and shorter courses. To understand these changes further the LSB wanted to explore in greater depth the implications of this greater flexibility. In particular:

- How the new approach will provide an adequate range of training options
- Risk of preferred training routes emerging
- Ensuring standards in the authorisation and supervision of AETOs
- AETOs as pupillage providers
- Removal of the requirement that students must complete a choice of specialised courses, in addition to the core mandatory ones.

### *Providing an adequate range of training options*

21. The success of the BSB's proposals relies on there being an adequate range of training options. The BSB said that while it expects a very small number of new entrant AETOs to the market in the initial phase, it's exploration of demand indicates that further new entrants will emerge later, and that these will be interested in exploring more innovative course structures and the potential for an apprenticeship pathway. The BSB said that it cannot guarantee what the spread of option offerings will be, but it considers that the variety of options will emerge from the market as a whole, rather than from the BSB being prescriptive to engineer this.

22. The BSB added it will not mandate that AETOs each provide more than one pathway. It considers that this would be a disproportionate requirement and contrary to its desire for a flexible and geographically dispersed market with big and small providers offering a range of training pathways. It estimates that larger providers with more resources are likely to offer more than one pathway in the longer term but seek authorisation on one pathway before exploring others. Its enquiries as part of the development of the proposals indicated that different approaches are likely to emerge, including, for instance, to offer two versions of a pathway (for example, one which includes optional course choices and one without). The BSB consider that this approach will be appealing to a range of students and budgets.

### *Risk of preferred training routes emerging*

23. The LSB noted from the application that the BSB will ensure all routes lead to minimum outcomes and will limit the number of pathways to four. We wanted to know more about how the BSB would ensure (as far as it can) that different AETOs, particularly those that offer the most flexible, accessible and affordable routes, are not viewed by prospective employers and chambers as less prestigious than those AETOs which provide courses more akin to the existing ones.

24. The BSB said it recognises the risk that some prospective employers/chambers might favour courses and training routes more akin to the existing ones. It acknowledges that this will require a change in organisational attitudes. In encouraging such attitudinal change, the BSB says it will engage with chambers and employers to try to raise awareness of the outcomes approach, so that employers and chambers do not

solely focus on the content of particular routes. The BSB said its work to improve advertising and recruitment practises (for pupillage) should also help.

#### *Ensuring standards in the authorisation and supervision of AETOs*

25. We asked the BSB how it will ensure it can monitor compliance with the Authorisation Framework and maintain consistency in standards. The BSB confirmed that the proposed Authorisation Framework, which the BSB will use in assessing applications for authorisation by training providers, will be applied proportionately having regard to factors such as the size and nature of the AETO. We wanted to know more about what this might mean in practice. For example, whether the smaller providers may warrant more oversight than larger more established providers and how the AETOs will be assessed.
26. The BSB confirmed that the assessment criteria used in the Authorisation Framework will reflect the scale and resources of different types of AETOs. As well as mandatory criteria, the Authorisation Framework includes “comply or explain” criteria. AETOs will need to explain which of these criteria are complied with.
27. Once authorised, the BSB’s approach to the supervision of AETOs, it says, will be proportionate and risk-based. For example, if an AETO is deemed to have a higher risk rating (where size and resource may be contributable), it may be subject to more intensive supervision interventions than those with a low risk rating.

#### *AETOs as pupillage providers*

28. We note that prior to authorisation, prospective AETOs that will be pupillage providers will need to provide evidence about how they will ensure that their training programme enables pupils to meet each of the Professional Statement competences to the threshold standard. Bearing in mind the limited number of pupillage providers and high demand for tenancies, we asked how the BSB will ensure that the training plans are transparent and are not so bespoke as to create barriers or preclude a pupil from taking up tenancy at another chambers/organisation, or restrict the ability of pupils who have completed their training elsewhere to successfully take up a tenancy.
29. The BSB said it recognised that pupillages vary from one provider to another. This, in part, highlights the positive aspects of work-based learning and can provide pupils with an opportunity to learn in a setting or organisation which is most closely aligned to their intended practice area. The LSB accepts that the changes are about offering flexibility to providers and students, but also recognise the risk from this that training could become so specialised as to lead to the exclusion of students that have not undertaken the same or similar routes. We have taken into account that this risk will partly be managed through the common competence standards, which aim to create a level benchmark across all pathways. However, the key will be for the BSB to ensure that the planned impact evaluation, which will address the overall impact of the reforms, will identify and provide the basis for addressing any unintended negative consequences.

30. We also wanted to know how the BSB will address the risk that existing pupillage providers might discontinue training because of being subject to a new authorisation regime. The BSB confirmed that transitional arrangements will be place during which the BSB will conduct authorisation of existing providers as a one-off process, after which they will be subject to the same risk-based supervision as other AETOs. Those chambers and organisations that currently provide pupillage will be able to continue to do so during the transitional period.
31. The BSB further said that the aim of the process is to ensure that all AETOs consistently meet the standards in the Authorisation Framework. In doing so, the BSB confirmed that it was committed to ensuring that the application process is proportionate and does not create a barrier to offering pupillage. It added it will support chambers and organisations through the application process, particularly since a number will have never been subject to authorisation previously. Guidance will be provided by the BSB as to the type of evidence that would reasonably be expected in support of an application for authorisation to train pupils, reflecting the difference in scale and resources between a small chambers and a large vocational training provider.

#### *Removal of the requirement for options modules on specialised vocational courses*

32. As referred to in paragraph 9, the BSB has removed the requirements that students must complete a choice of specialised courses. Although AETOs will still be able to offer specialised options if they wish. The BSB clarified that this was taken on the basis that there was no justification based on the outcomes outlined in the Professional Statement, which defines the skills and knowledge which barristers must have. It also considered that continuing to mandate options modules might artificially inflate costs for providers who deliver programmes aimed at meeting the Professional Statement requirements and nothing more (as minimum outcomes). The BSB further clarified that where a provider can explicitly demonstrate how offering a particular option will add value in some way, these will be approved on that basis.

#### Regulatory relationship between the BSB and the Inns of Court

33. The resetting of the regulatory relationship between the BSB and COIC and the Inns of Court marks a notable shift in the BSB's approach. LSB was particularly interested in two key aspects of this:
- Continuation of the Qualifying Sessions
  - Fit and proper tests, student conduct and the MoU

#### *Continuation of the Qualifying Sessions*

34. We wanted to know more about the extent to which students are expected to benefit from Qualifying Sessions following these reforms. In particular, how the proposed approach to Qualifying Sessions will provide opportunities for students and pupils to meet the requirements of the Professional Statement and provide other networking and career opportunities for all students regardless of social, economic or cultural background.

35. The BSB said that the Inns will develop and publish a programme of Qualifying Sessions with learning outcomes for each session. These will supplement (and compliment) formal training provided elsewhere. The BSB confirmed that it expected students to have a range of short educational sessions to choose from. These will be organised according to five themes and it will not be possible to complete the 10 required sessions without having attended at least one session from each of the themes. The themes are:
- Ethics, Standards and Values
  - Advocacy Skills
  - Legal Knowledge, Justice and the Rule of Law
  - Equality, Diversity and Inclusion
  - Preparation for Pupillage, Career Development and Wellbeing
36. The LSB is aware of criticism from some quarters that the Qualifying Sessions can be perceived as elitist or exclusive, and of limited educational value. The BSB confirmed that the sessions will be about learning what is unique about practise at the Bar (for example, independence, rule of law, access to justice). The BSB said it also considered that the mode for learning about such topics is crucial and therefore the reason the Qualifying Sessions remain compulsory is to ensure that the networking/developmental opportunities are not enjoyed simply by a select group (who are likely to be the best connected). The BSB's view is that enabling those from less traditional backgrounds to participate is important. In terms of addressing concerns about the worth of continuing the Qualifying Sessions, we are reassured that assessing the impact of the continuation of the sessions will be an important part of the BSB's evaluation strategy in respect of the overall FBT changes.

*Fit and proper tests, student conduct and the MoU*

37. The LSB considered the decision by the BSB not to take on the role of vetting students and managing student conduct, instead opting to enhance its regulatory role through greater oversight and the establishment of a MoU between the BSB, COIC and the Inns of Court. While the MoU is not in itself a regulatory arrangement or legally binding the LSB reviewed the final MoU as part of its assessment.
38. The BSB's powers under the proposals give it overall control of the qualification and certification process. We have taken into account that the new rules state that the BSB shall set out in writing the requirements to be met by an Inn in admitting student members and calling individuals to the Bar, and the manner in which an Inn assesses whether individuals are fit and proper. Importantly, in terms of the BSB's regulatory control, the Inns will need to comply with the MoU for their candidates to be eligible to qualify for a practising certificate, as the BSB sets the qualification and practising certificate requirements.
39. We concluded overall that the MoU approach appears to strike a balance between the BSB's oversight role and the Inns' role under the Act. We therefore take the view that the BSB's proposed framework should be given time to work. However, we are pleased that the BSB will keep the position under review. The LSB will maintain a keen interest in the BSB's ongoing review.

### The BSB's response to additional concerns raised in consultation

40. The LSB considered additional issues and risks identified in BSB consultations in respect of the managed pathways and more flexible approach, and how the BSB had responded. We noted for example that many respondents suggested the existing route was “tried and tested” and it was the benchmark for high standards. Also that by opening up multiple permitted pathways a two-tiered system may emerge (where one pathway was seen as better quality than others), and that those from underrepresented background might suffer the most if they choose the wrong pathway.
41. With regards to the risk that a two-tier approach might emerge, we noted that the BSB's proposed training provider authorisation and quality assurance processes will be embedded in the new approach. The LSB can see that this should enable training routes to lead to the same minimum outcomes, with variations in popularity driven by student choice, cost and course delivery.
42. In respect of those students from underrepresented backgrounds losing out dependent on their choice of pathway, the LSB is reassured that these issues were explored by the BSB through its equality impact analysis (EIA). While the EIA was conducted in 2017, the assessment concluded overall that the proposed changes to the training/education arrangements were likely to have mostly positive or neutral impacts. In short the assessment appears to support the BSB's contention that the managed pathways approach will lead to a more accessible, flexible and affordable paths to qualification as a barrister. The BSB will need to ensure that its planned impact evaluation allows for the actual equality impact to be monitored so that it can respond to any issues identified.
43. We nonetheless acknowledge the risks, for example, an insufficient number of training providers, which could have an impact on diversity if this leads to a reduced geographical spread of training (consequently reducing access to certain protected groups). However, as highlighted in paragraph 21 above, while a very small number of new entrant AETOs to the market are expected in the initial phase, it anticipates further new entrants to emerge later from the market.

### **Overall LSB conclusions**

44. The changes proposed by the BSB will introduce greater flexibility in permitted training pathways. While there are risks associated with these changes, we have taken into account that the BSB has provided sufficient assurance in relation to its identification of, and approach to monitoring and mitigating these risks.
45. With respect to continuing the Qualifying Sessions and greater regulatory oversight of the Inns through a MoU, we have accepted that at this stage, this is an improvement on the current position. As indicated above, the LSB will take a close interest in how the MoU works and the impact that the new arrangement has.
46. Overall, the LSB is reassured that the BSB has put in place robust plans for monitoring and evaluation. In particular, we noted from the application that an external

supplier has been contracted by the BSB to deliver an independent evaluation of the FBT programme. This will address how the reforms are implemented and delivered in the first few years and will measure impacts, as well as whether the programme has met its objectives. We will ensure that, through our regulatory performance framework, the BSB responds appropriately to the results of its evaluation work, particularly if it identifies that any risks are materialising in practice. In addition, the LSB has a statutory role in this area, as Section 4 of the Act gives the LSB specific duties to maintain and develop the standards of education and training.

47. Taking the above into account, we do not believe that this application gives grounds for refusal under the Act.

### **Adjustments to the regulations in the assessment period**

48. The LSB, in undertaking a review of the regulations themselves and in addition to the substantive issues set out above, raised with the BSB a limited number of drafting points on issues around presentation and clarification of phrasing and terminology. As a result, minor drafting amendments were made by the BSB. These changes are reflected in the rules attached to the notice.

### **Decision**

49. The LSB has considered the BSB application against the criteria in paragraph 25(3) of Schedule 4 to the Act. It considers that there is no reason to refuse the application and accordingly the application is granted.

50. **Annex A** to this decision notice sets out the regulatory arrangements approved by the LSB.

### **Chronology**

- The LSB confirmed receipt of an application from the BSB on 30 November 2018.
- The 28-day initial decision period for considering the application ended on 27 December 2018.
- An extension notice was issued on 20 December 2018 extending the initial decision period to 27 February 2019.
- This decision notice is effective from 26 February 2019.
- The decision notice will be published on our website by 28 February 2019.

**Neil Buckley, Chief Executive**

**Acting under delegated authority granted by the Board of the Legal Services Board  
26 February 2019**

*Notes:*

1. The LSB is required by Part 3 of Schedule 4 to the Act to review and grant or refuse applications by approved regulators to make alterations to their regulatory arrangements.
2. Paragraph 25(3) of Schedule 4 to the Act explains that the LSB may refuse an application setting out a proposed change to the regulatory arrangements 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 this 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 [of the Act] 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.
3. The designation requirements referred to in paragraph 2(b) above are set out in paragraph 25(4) of Schedule 4 to the Act and are
  - (a) a requirement that the approved regulator has appropriate internal governance arrangements in place
  - (b) a requirement that the applicant is competent, and has sufficient resources to perform the role of approved regulator in relation to the reserved legal activities in respect of which it is designated, and
  - (c) the requirements set out in paragraphs 13(2)(c) to (e) of Schedule 4, namely that the regulatory arrangements are appropriate, comply with the requirements in respect of resolution of regulatory conflict (imposed by sections 52 and 54 of the Act) and comply with the requirements in relation to the handling of complaints (imposed by sections 112 and 145 of the Act).
4. In accordance with paragraphs 20(1) and 23(3) of Schedule 4 to the Act, the LSB has made rules<sup>3</sup> about the manner and form in which applications to alter regulatory arrangements must be made. Amongst other things, the rules highlight the applicant's obligations under section 28 of the Act to have regard to the Better Regulation Principles. They also require applicants to provide information about each proposed change and details of the consultation undertaken.
5. If the LSB is not satisfied that one or more of the criteria for refusal are met, then it must approve the application in whole, or the parts of it that can be approved.

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<sup>3</sup> Rules for Rule Change Applications – Version 2 (November 2010)

## **Annex A**

### **PART 4**

#### **BAR QUALIFICATION RULES**

##### **A. APPLICATION OF THESE RULES**

- rQ1 Section 4.B applies to all individuals who wish to be *called to the Bar* and to become qualified to practise as a *barrister* and to *Authorised Education and Training Organisations (AETOs)*.
- rQ2 Section 4.C applies to all *practising barristers*.

##### **B. BAR QUALIFICATION RULES**

###### **B1. Purpose of the Bar Qualification Rules**

- oQ1 To provide routes for the qualification of *barristers* that enable them to meet the Professional Statement and to provide for the regulation of *AETOs*.

###### **B2. Routes to Qualification as a *barrister* and *authorised person***

- rQ3 To be called to the *Bar* by an *Inn* an individual must have successfully completed the following:
- .1 *academic legal training*;
  - .2 *vocational training*;
  - .3 the number of *qualifying sessions* as a student member of an *Inn* as prescribed from time to time by the *BSB*; and
  - .4 pay such fee or fees as may be prescribed.
- rQ4 To obtain a *provisional practising certificate* a *barrister* must:
- .1 have successfully completed a period of *pupillage* satisfactory to the *BSB*;
  - .2 pay such fee or fees as may be prescribed.
- rQ5 To obtain a *full practising certificate* a *barrister* must:
- .1 have successfully completed a further period of *pupillage* satisfactory to the *BSB*;
  - .2 pay such fee or fees as may be prescribed.
- rQ6 The *BSB* shall set out in writing:
- .1 the requirements to be met by an *Inn* in admitting student members and calling individuals to the *Bar*;

- .2 the manner in which an *Inn* shall assess whether such individuals are fit and proper; and
- .3 the minimum requirements for the delivery of *qualifying sessions* by an *Inn*.

### Exemptions

- rQ7 The *BSB* may grant exemptions from all or part of the requirements set out in rQ3 to rQ5 above.
- rQ8 In deciding whether to grant an exemption from part or all of any component of training, the *BSB* will determine whether the relevant knowledge and experience of the applicant make it unnecessary for further training to be required.
- rQ9 An exemption from part or all components of training may be granted unconditionally or subject to conditions, which may include in an appropriate case:
- .1 a requirement to do training instead of the training prescribed by this Section; and/or
  - .2 a condition that the applicant must pass a *Bar Transfer Test*.
- rQ10 Where the *BSB* exempts an individual pursuant to rQ7 above, it may also:
- .1 grant exemption in whole or in part from the requirement to attend *qualifying sessions*; and
  - .2 specify the period within which any requirement to attend *qualifying sessions* must be fulfilled, which may be a period ending after the individual concerned has been called to the *Bar*.
- rQ11 An application for exemption under this Section must be in such form as may be prescribed by the *BSB* and contain or be accompanied by the following:
- .1 details of the applicant's educational and professional qualifications and experience that meets the standards required of candidates;
  - .2 evidence (where applicable) that the applicant is or has been entitled to exercise rights of audience before any *court*, specifying the rights concerned and the basis of the applicant's entitlement to exercise such rights;
  - .3 any other representations or evidence on which the applicant wishes to rely in support of the application;
  - .4 verified English translations of every document relied on which is not in the English language; and
  - .5 payment of such fee or fees as may be prescribed.
- rQ12 Before deciding whether to grant any exemption under this Section, the *BSB* may make any further enquiries or require the applicant to provide any further information that it considers relevant.

### Full exemption

- rQ13 If the *BSB* is satisfied that an applicant falls within Rule Q14, the *BSB* will:

- .1 exempt the applicant from any component of training prescribed by this Section which the applicant has not fulfilled; and
- .2 authorise the applicant to practise as a *barrister* on their being admitted to an *Inn* and called to the *Bar* subject to complying with the Handbook.

rQ14 The following categories of individual fall within this Rule:

- .1 an individual who has been granted rights of audience by an *approved regulator* and who is entitled to exercise those rights in relation to all proceedings in all courts of England and Wales;
- .2 subject to Rule rQ15, an individual who has been granted rights of audience by an *approved regulator* and who is entitled to exercise those rights in relation to either all proceedings in the High Court or all proceedings in the Crown Court of England and Wales (but not both);
- .3 a *barrister* of Northern Ireland who has successfully completed *pupillage* in accordance with the rules of the *Bar* of Northern Ireland;
- .4 subject to Rule rQ16, a *Qualified European Lawyer*.

rQ15 The *BSB* may exceptionally require an applicant who falls within Rule rQ14.2 to do part of *pupillage* if it considers this necessary having regard particularly to the knowledge, professional experience and intended future *practice* of the applicant.

rQ16 Subject to Rules rQ18 to rQ20, the *BSB* may require a *Qualified European Lawyer* to pass a *Bar Transfer Test* if the *BSB* determines that:

- .1 the matters covered by the education and training of the applicant differ substantially from those covered by the *academic legal training* and the *vocational training*; and
- .2 the knowledge acquired by the applicant throughout their professional experience does not fully cover this substantial difference.

### **Registered European Lawyers**

rQ17 The Rules governing registration as a *Registered European Lawyer* are in Section 3.D of this *Handbook*.

rQ18 The *BSB* may not require an applicant who is a *Registered European Lawyer* and who falls within Rule rQ20 or rQ21 to pass a *Bar Transfer Test* unless it considers that the applicant is unfit to *practise* as a *barrister*.

rQ19 In considering whether to require an applicant who falls within Rule rQ21 to pass a *Bar Transfer Test*, the *BSB* must:

- .1 take into account the professional activities the applicant has pursued while a *Registered European Lawyer* and any knowledge and professional experience gained of, and any training received in, the law of any part of the United Kingdom and of the rules of professional conduct of the *Bar*; and
- .2 assess and verify at an interview the applicant's effective and regular pursuit of professional activities and capacity to continue the activities pursued.

rQ20 To fall within this Rule an applicant must have:

- .1 for a period of at least three years been a *Registered European Lawyer*, and
- .2 for a period of at least three years effectively and regularly pursued in England and Wales under a *Home Professional Title* professional activities in the law of England and Wales.

rQ21 To fall within this Rule an applicant must have:

- .1 for a period of at least three years been a *Registered European Lawyer*, and
- .2 for a period of at least three years effectively and regularly pursued in England and Wales professional activities under a *Home Professional Title*; and
- .3 for a period of less than three years effectively and regularly pursued in England and Wales under a *Home Professional Title* professional activities in the law of England and Wales.

rQ22 For the purpose of this Section, activities are to be regarded as effectively and regularly pursued if they are actually exercised without any interruptions other than those resulting from the events of everyday life such as absence through illness or bereavement, customary annual leave or parental leave.

### **Partial exemption**

rQ23 If the *BSB* is satisfied that an applicant falls within Rule rQ24, the *BSB* will exempt the applicant from the *academic legal training* and the *vocational training* and, if the *BSB* thinks fit, from part or all of *pupillage*.

rQ24 The following categories of individual fall within this Rule:

- .1 an individual who has been granted rights of audience by another *Approved Regulator* and is entitled to exercise those rights in relation to any class of proceedings in any of the *Senior Courts* or all proceedings in county courts or magistrates' courts in England and Wales;
- .2 a *Qualified Foreign Lawyer* who has for a period of at least three years regularly exercised full rights of audience in courts which administer law substantially similar to the common law of England and Wales;
- .3 a teacher of the law of England and Wales of experience and academic distinction.

### **Temporary call to the Bar of Qualified Foreign Lawyers**

rQ25 A *Qualified Foreign Lawyer* ("the applicant") who falls within Rule rQ24.2 may apply to be called to the *Bar* by an *Inn* on a temporary basis for the purpose of appearing as counsel in a particular case before a *court* of England and Wales without being required to satisfy any other requirements of this Section if the applicant has:

- .1 obtained from the *BSB* and submitted to an *Inn* a *Temporary Qualification Certificate* specifying the case for the purposes of which the applicant is authorised to be called to the *Bar*;
- .2 duly completed and signed a *call declaration* in the form prescribed by the *BSB* from time to time; and

- .3 paid such fee or fees as may be prescribed.
- rQ26 The *BSB* will issue a *Temporary Qualification Certificate* if the applicant submits to the *BSB*:
- .1 evidence which establishes that the applicant is a *Qualified European Lawyer* or falls within Rule rQ24.2;
- .2 a *certificate of good standing*; and
- .3 evidence which establishes that a *Professional Client* wishes to instruct the applicant to appear as counsel in the case or cases for the purposes of which the applicant seeks temporary *call* to the *Bar*.
- rQ27 *Admission to an Inn* and *call* to the *Bar* under Rule rQ25 take effect when the applicant is given notice in writing by the *Inn* that the applicant has been admitted to the *Inn* and called to the *Bar* under Rule rQ26 and automatically cease to have effect on conclusion of the case or cases specified in the applicant's *Temporary Qualification Certificate*.
- rQ28 Where an individual is dissatisfied with a decision by either the *BSB* or an *Inn* in relation to rQ3 to rQ5 and rQ7 to rQ26 above they may apply to the *BSB* for a review.

### **B3. Authorised Education and Training Organisations**

- rQ29 Providers of *vocational training* and *pupillage* must be authorised by the *BSB* as an *AETO*.
- rQ30 An application to become an *AETO* must be made in such form and be accompanied by payment of such fee or fees as may be prescribed by the *BSB*.
- rQ31 In determining an application from an applicant to become an *AETO*, the *BSB* will have regard to the *Authorisation Framework* and in particular the mandatory criteria. The *BSB* will not approve an application to become an *AETO* unless it is satisfied that it is:
- .1 able to meet the mandatory criteria set out in the *Authorisation Framework* relevant to the application; and
- .2 a suitable provider for the purposes of the *Authorisation Framework*.
- rQ32 The *BSB* may grant authorisation to an *AETO* on such terms and conditions as it considers appropriate including the period of authorisation.
- rQ33 The *BSB* may vary, amend, suspend or withdraw authorisation of an *AETO* in the following circumstances:

- .1 the *AETO* has applied for such variation, amendment, suspension or withdrawal;
- .2 the *AETO* ceases to exist, becomes insolvent or merges;
- .3 the *AETO* fails to comply with conditions imposed upon its authorisation;
- .4 the *BSB* is of the view that the *AETO* has failed or will fail to fulfil the mandatory requirements set out in the *Authorisation Framework*;
- .5 the *BSB* is of the view that the *AETO* is not providing the training for which it was authorised to an adequate standard or there has been a material change in the training provided; or
- .6 the *BSB* is of the view that the continued authorisation of the *AETO* would inhibit the *Regulatory Objectives*.

rQ34 An *AETO* which is dissatisfied by a decision in relation to rQ31 – rQ33 above may apply to the *BSB* for a review.

#### **B4. REVIEW AND APPEALS**

rQ35 Where provision is made under this Section for a review by the *BSB* of a decision, any request for such a review must be accompanied by:

- .1 a copy of any notice of the decision and the reasons for it received by the *person* requesting the review (“the applicant”);
- .2 where the decision is a decision of an *Inn or the ICC*, copies of all documents submitted or received by the applicant which were before the *Inn or the ICC*;
- .3 any further representations and evidence which the applicant wishes the *BSB* to take into account; and
- .4 payment of such fee or fees as may be prescribed.

- rQ36 Where the decision under review is a decision of an *Inn*, the *BSB* will invite the *Inn* to comment on any further representations and evidence which the applicant submits under Rule rQ35.3.
- rQ37 On a review under this Section the *BSB*:
- .1 may affirm the decision under review or substitute any other decision which could have been made on the original application;
  - .2 may in an appropriate case reimburse the fee paid under Rule rQ35.4; and
  - .3 will inform the applicant and any other interested *person* of its decision and the reasons for it.
- rQ38 Where provision is made under this Section for a review of a decision by the *BSB*, this review may be delegated to an *Authorisation Review Panel*, where specified by the *BSB*.
- rQ39 Where under this Section provision is made for a review by the *BSB* of a decision, no appeal may be made to the High Court unless such a review has taken place.
- rQ40 An individual who is adversely affected by a decision of the *BSB* under Section B.2 may appeal to the High Court against the decision.

#### **Definitions [to be inserted in Part 6]**

“*Academic legal training*” means:

(a) a UK degree, awarded at level 6 (or above) of the Framework for Higher Education Qualifications, by a recognised degree-awarding body and which contains the following subject content: Contract, Property Law, Tort, Criminal Law, Constitutional and Administrative Law, Equity and Trusts and the Law of the European Union; or

(b) a UK degree, awarded at level 6 (or above) of the Framework for Higher Education Qualifications, by a recognised degree-awarding body together with a degree programme or degree conversion programme (ie Graduate Diploma in Law or equivalent) which includes the following subject content: Contract, Property Law, Tort, Criminal Law, Constitutional and Administrative Law, Equity and Trusts and the Law of the European Union.

“*Authorisations Review Panel*” means a panel of three members convened from a pool of appointed panellists, to consider applications for review made under Part 3 C6, Part 3 E11, or Part 4 B4, or reviews of decisions taken under Part 1 4A, of the *Bar Standards Board Handbook*.

“*AETO*” is an Authorised Education and Training Organisation which is authorised by the *BSB* to provide a vocational training course and/or *pupillage* in accordance with the *Authorisation Framework*.

“*Authorisation Framework*” means the framework published by the *BSB* setting permitted pathways and their mandatory training components for the qualification of *barristers* in order to meet the Professional Statement and the criteria for authorisation of *AETOs*. It also includes the prescribed Curriculum and Assessment Strategy and additional publications as detailed in the framework.

“*Independent Decision-Making Body*” means body established by the *Bar Standards Board* to provide a pool of members for *Independent Decision-Making Panels*<sup>4</sup>.

“*Independent Decision-Making Panel*” means a panel established to take decisions independently of the executive of the *Bar Standards Board* as provided for in the *Handbook* and consisting of members of the *Independent Decision-Making Body*<sup>5</sup>.

“*Pupillage*” means a period of training which is work-based learning provided by an *AETO* in accordance with its authorisation by the *BSB*.

“Qualifying sessions” means professional development events of an educational or collegiate nature arranged by or on behalf of an *Inn*.

“Student member” means an individual *who is* a member of an *Inn of Court* for the purposes of training to become a *barrister*.

“*Vocational training*” means a vocational component training course provided by an *AETO* in accordance with the *Authorisation Framework*.

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<sup>4</sup> This assumes the *BSB*'s proposals to establish such a body are approved. In the absence of this body, and pending its establishment, the current *Authorisation Review Panel* will continue.

<sup>5</sup> As above.

### Consequential changes to the BSB Handbook

REF	Current provision	Proposed provision
r12	BSB has no power without unanimous consent of the Inns to amend or waive rule Q4.1 (that barristers must be called by an Inn) so as to permit barristers not called to the bar by an Inn to practise as a barrister	Replace with “The <i>BSB</i> shall not without the unanimous consent of the Inns amend or waive any rule so as to permit a person who has not been called to the Bar by an Inn to practise as a barrister.”
r17.1.b	States that the Handbook applies to <i>“barristers who are undertaking either the first non-practising six months of pupillage or the second practising six months of pupillage...”</i>	Replace with “... <i>barristers</i> who are undertaking <i>pupillage</i> ...”
r17.1.c	Handbook applies to all <i>“other barristers who do not hold a practising certificate but who have been called to the bar by one of the Inns and have not ceased to be a member of the bar”</i>	Replace with “...all <i>unregistered barristers</i> .”
r17.8	That solely section 4.b of the Handbook applies to students and approved training organisations	Replace with “Solely as regards section 4B of the Handbook, individuals who wish to be called to the Bar and to become qualified to practise as a barrister and authorised education and training organisations.”
r17.9	Persons (with the exception of pupils undertaking first six months of pupillage, unregistered barristers and owners) are referred to as “BSB regulated persons” throughout the Handbook	Replace with “Persons (with the exception of pupils without a provisional practising certificate, unregistered barristers and owners) are referred to as “BSB regulated persons” throughout the Handbook”
gC39	Stipulates that in order to provide a ‘competent standard of work’ barristers must take part in educational activities and professional development. It states that merely complying with minimum CPD requirements may not be enough to comply with rC15, and refers to other training requirements (e.g. police station qualification)	Delete “minimum” from CPD requirements.
rC77	Exceptions to the provision that self-employed barristers be a member of BMIF:	rQ98 will be replaced with rQ25

	a pupil who is covered by their pupil supervisor's insurance or a person called under rQ98 (temp. call)	
rC113 rC114 rC118	Pupillage funding rules. <sup>6</sup>	Replace all instances of "six months" with "period"  rC118.2 replace "pupil-master" and "pupil-masters" with "pupil supervisor" and "pupil supervisors".
rC117	Funding exemptions for rC113-116	delete
rS11	Non-practising pupils who accept a brief with permission of supervisor/HOLP do not practise as "a barrister" under rS9	Replace "...pupil in the non-practising six months of pupillage.." with "...pupil without a provisional practising certificate..."
rS19	Pupils who have completed or been exempted from non-practising part of pupillage may only supply legal services to the public or exercise any right by way of being a barrister with permission of pupil supervisor/head of chambers/HOLP	Replace "...who has completed or been exempted from the non-practising six months of pupillage" with "with a provisional practising certificate..."
rS40	Provides that if a person was called to the Bar under rQ98 (temporary call of QFLs) they may not practise as a barrister other than to conduct cases specified in the certificate referred to in rQ99	Replace with "Provides that if a person was called to the Bar under rQ25 (temporary call of QFLs) they may not practise as a barrister other than to conduct cases specified in the certificate referred to in rQ26"
rS45.3.a	Eligibility for practising certificates, including training requirements	Replace with "within the last 5 years either (i) you have held a <i>practising certificate</i> ; or (ii) you have satisfactorily completed (or have been exempted from the requirement to complete) the pupillage component of training; or"
rS46.1.a	Eligibility for types of practising certificates (full, provisional, limited and RELs), including training requirements	Delete "12 months of"
rS46.1.b		Delete "12 months of"
rS46.2		Replace with "a <i>provisional practising certificate</i> if you have

<sup>6</sup> Further changes to these rules will be sought in 2019.

		successfully completed a period of pupillage satisfactory to the BSB for the purposes of rQ4 and at the time...”
rS64	“A provisional practising certificate authorises pupils in their second six to exercise rights of audience before every court in all proceedings...”	Replace with “A <i>provisional practising certificate</i> shall authorise a pupil to exercise rights of audience before every court in all proceedings...”