

# BAR STANDARDS BOARD

REGULATING BARRISTERS

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

##### 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*.
- 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*.

## **Exemptions**

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.

rQ31 In determining an application to be an *AETO* the *BSB* will have regard to the *Authorisation Framework* and in particular the mandatory criteria. The *BSB* will not approve an application by an *AETO* unless it is satisfied that the *AETO* 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* or organisation 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 *Independent Decision-Making 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.

“*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 the body established by the *BSB* to take decisions independently of the executive of the *BSB* as provided for in the *BSB Handbook*<sup>1</sup>.

“*Independent Decision-Making Panel*” means a Panel consisting of members of the

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<sup>1</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 review panels would continue.

IDB established to take decisions as provided in the BSB Handbook<sup>2</sup>.

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

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

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

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<sup>2</sup> As above.