

BAR STANDARDS BOARD

REGULATING BARRISTERS

Guidance on Practising Certificates for Pupils and Newly Qualified Barristers

This guidance is intended to provide information regarding the need for pupils and newly qualified barristers to hold practising certificates, as part of the Authorisation to Practise regime that has been brought in as a result of the Legal Services Act 2007 ('the Act').

Background

Under the Act, barristers are only legally entitled to undertake a reserved legal activity if they have been authorised to do so by the Bar Standards Board ('BSB') (see s20(6) of the Act). Pursuant to s14 of the Act, it is a criminal offence to undertake a reserved legal activity when not authorised. The punishment for such a conviction is imprisonment for up to 2 years and/or a fine. As a result of the Act, the Bar Standards Board has introduced an Authorisation to Practise regime to ensure that it is clear what reserved legal activities those entitled to practise as barristers are authorised to undertake.

What are 'reserved legal activities'?

Pursuant to s12 (also see Schedule 2) of the Act, the reserved legal activities are:

- the exercise of a right of audience
- the conduct of litigation
- reserved instrument activities
- probate activities
- notarial activities, and
- the administration of oaths.

Giving legal advice (orally or written) that is outside the six reserved legal activities is not restricted by the Act. However, you are still regulated by the Code of Conduct when undertaking non-reserved legal activities.

What is the effect of Authorisation to Practise on pupils?

The Bar's Code of Conduct allows pupils who have completed the non-practising period of pupillage to practise as a pupil barrister. As this is likely to involve the exercise of reserved legal activities, practising pupils must hold a practising certificate. In line with the Authorisation to Practice process as of 1 April 2012 pupils will be issued with a Provisional Practising Certificate.

What does this mean for pupils?

The BSB will issue a Provisional Practising Certificate to those who have done the following:

- completed a first six
- submitted to the BSB a satisfactorily completed certificate verifying completion of the first six, and
- registered a second six with the BSB (*N.B: Please note that if you are undertaking your second six by undertaking external training, you will not be issued with a Provisional Practising Certificate as pupils undertaking external training are not entitled to exercise reserved legal activities*)

Until you have done so, you will not be able to obtain a Provisional Practising Certificate and therefore will not be able to exercise any reserved legal activities, including rights of audience, as part of your second six.

There is likely to be a short delay between completion of your first six and when you are able to exercise a right of audience as part of your second six. In order to reduce the delay, we urge you to submit to the BSB the requisite certificate signed by your pupil supervisor as soon as possible on successful completion of your first six. We would advise that you submit your certificate one week in advance, if your pupil supervisor is happy to sign your certificate in advance of your completion of first six. Your certificate will still need to indicate the full dates of your first six.

If your pupil supervisor is unavailable to sign your certificate, you can ask your Head of Chambers/Director of Pupil Training to sign it, so long as they indicate on your form who your pupil supervisor was for the relevant period. Additionally, you can email us a scanned copy of the signed form or fax it to us to prevent any potential delays in the post. The relevant contact details are listed at the end of this guidance

Once received, the BSB will process your forms as a matter of priority. If the information provided is satisfactory, we will send you an e-mail (provided that we have your e-mail address) to confirm that you are authorised to exercise reserved legal activities and the effective date you are authorised from. We will then issue you with a Provisional Practising Certificate. You will still receive a Provisional Qualification Certificate which will certify that you have completed your first six; however, the Provisional Qualification Certificate does not authorise you to practise.

In order to prevent delay due to our internal administration processes, the confirmation e-mail that will be sent to you will say that you are entitled to exercise reserved legal activities from either the date and time of the e-mail or the commencement date of your second six – you do not need to wait until you have received a physical Provisional Practising Certificate. We hope that these arrangements will keep the delay to a minimum – it is therefore important that you ensure that we have an up-to-date e-mail address for you.

We urge you to ensure that your pupil supervisor and clerks are aware of these requirements, as it means that you will not be able to exercise reserved legal activities as part of your second six until you have been advised that you are authorised to do so.

A Provisional Practising Certificate that was issued before 1 September 2013 that came into effect from either the 1st of April or the commencement date of your second six will remain valid until 31 March of the following year.

A Provisional Practising Certificate issued from the 1 September 2013 that comes into effect from the commencement date of your second six remains valid for 30 days beyond the completion date of your second six. This arrangement is to enable pupils to submit their pupillage documentation within 30 days of completion of their second six and arrange the issue of a Full Practising Certificate with the Records Office to commence practice. If you need to extend your second six beyond this date, you will need to notify the Bar Standards Board so that a further Provisional Practising Certificate can be issued. If you do not complete the required paperwork within 30 days of completion of your second six, your Provisional Practising Certificate will no longer be valid and you will not be entitled to practise until such time that you have submitted the appropriate paperwork and obtained a Full Practising Certificate.

It is important to note the restrictions that apply to second six pupils practising under a Provisional Practising Certificate:

rS11 of the Scope of Practice Rules in the BSB Handbook only allows second six pupils to supply legal services as a pupil barrister and exercise reserved legal activities if they have the permission of their pupil-supervisor or head of chambers. Therefore, although the Provisional Practising Certificate that is issued to you may remain valid until a date after the proposed completion date of your second six, it will only authorise you to practise so long as you remain a second six pupil practising with the permission of your pupil supervisor or head of chambers.

Please note that 3rd six is considered as a period of practice and is not covered by the Provisional Practising Certificate. You will need to obtain a Full Practising Certificate in order to commence a period of 3rd six.

See the guidance below for information about what to do when you finish your second six.

What does this mean for newly qualified barristers?

If your pupillage commenced before 1 September 2013, on completion of your second six, you will need promptly to submit to the BSB a certificate signed by each pupil supervisor in your second six, the Head of Chambers and Director of Pupil Training confirming that you have satisfactorily completed your second six, along with your checklist and a completed Authorisation to Practise form. If the certificate cannot be signed by all, the certificate should indicate who is unable to sign and why they are not available. If any of your pupil supervisors are unavailable to sign, the certificate should still indicate the name of the pupil supervisor unable to sign and the dates of their supervision. The certificate must be completed by a minimum of two members of the approved training organisation, one of which must be the Head of Chambers or Director of Pupil Training.

If your pupillage commenced from the 1 September 2013, on completion of your second six, you will need promptly to submit to the BSB a certificate signed by your pupil supervisor at

the conclusion of your practising period of pupillage certifying the entire period of your practising period of pupillage, along with your checklist and a completed Authorisation to Practise form. If your pupil supervisor is unavailable to sign your certificate, you can ask your Head of Chambers/Director of Pupil Training to sign it, so long as they indicate on your form on whose behalf they are signing and the reason the pupil supervisor is unable to sign. Additionally, you can email us a scanned copy of the signed form or fax it to us to prevent any potential delays in the post. The relevant contact details are listed at the end of this guidance

After you have submitted the requisite forms to us, we will send you a Full Qualification Certificate which will certify that you have completed your second six. In order to commence practice after your second six, you must return a completed Authorisation to Practise form confirming that you have commenced practice and providing your practice address and confirm with the Records Office in relation to the issuing of your Full Practising Certificate. If you do not return an Authorisation to Practise form, you may be in breach of rC64 of the Code of Conduct in the BSB Handbook, which states that 'you must promptly provide all such information to the *Bar Standards Board* as it may, for the purpose of its regulatory functions, from time to time require of you, and notify it of any material changes to that information'.

Provided you have submitted to the BSB the requisite certificate confirming satisfactory completion of your second six, returned an Authorisation to Practise form indicating that you are practising and confirmed with the Records Office regarding the issuing of your Full Practising Certificate; you will be entitled to commence practice as a barrister. Please note that as of 1 April 2012 on completion of 2nd six, pupils are required to notify the Records Office of any change of status or details within 28 days.

What does this mean for pupil supervisors?

All pupil supervisors should be aware of the changes arising from the Legal Services Act and Authorisation to Practise. Pupil supervisors should be aware that until a pupil has complied with the requirements explained in this guidance and been issued with a Provisional Practising Certificate, the pupil will not be legally entitled to exercise reserved legal activities. It is important that you inform the clerks of these requirements so that they do not book a hearing for a pupil who has not yet been authorised to exercise reserved legal activities.

Who do I contact with questions?

If you have any questions about these requirements, or need to submit any certification forms, please contact:

Education Administrator
Bar Standards Board, 289-293 High Holborn
London WC1V 7HZ
DX 240 LDE
E-mail: pupillagerecords@barstandardsboard.org.uk
Tel: 020 7611 1444
Fax: 020 7831 9217

Bar Standards Board
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