



Authorisation to practise

Committee briefing paper

To be circulated to all committees of the Bar Council and Bar Standards Board (BSB).

Introduction

1. The application process to obtain a practising certificate is changing significantly. From 2012, when barristers receive their renewal notice or contact the Bar Council to resume practise, they will be required to complete a new registration process. Only successful completion will ensure that they are authorised to practise.
2. It is important for all committee members to be aware of these changes, and how they impact upon the profession.

Why this change?

3. Following consultation with the profession (to which some committees responded), the BSB developed new rules which have been approved by the Legal Services Board (LSB). The new rules modernise the authorisation process and bring arrangements into compliance with the Legal Services Act 2007 ("the Act"). Section 13(2) requires individuals wishing to provide reserved legal activities as barristers to be authorised by their approved regulator. Under section 14 of the Act it is a criminal offence for a barrister to carry out a reserved legal activity unless they are authorised to do so by a practising certificate.
4. The new rules aim to provide increased consumer protection and confidence: members of the public will be able to look up barristers on the BSB Register and be assured that these barristers are permitted to practise by their regulator. There will be an explanation of the activities that the barrister is authorised to carry out and their meaning. Those who do not renew will be removed from the BSB Register.

The current arrangements

5. Under the existing regime, the annual renewal process of practising certificates is less formal. Each year, all practising barristers are sent a notice by the Bar Council's

Records Office reminding them that they need to pay an annual fee to renew their practising certificates. Renewal simply involves paying the fee.

6. At present there is no link to compliance with the criteria that must be met in order to practise as a barrister e.g. CPD and professional indemnity insurance cover. The current arrangements for ensuring compliance with these requirements are not linked to the practising certificate renewal process.

The new rules

The new rules can be found on the BSB website:

<http://www.barstandardsboard.org.uk/Practisingcertandcpd/NewAP/>

7. The new rules and changes to the Code of Conduct set out:
 - those who are eligible for a practising certificate
 - the process of applying for a practising certificate
 - the different types of practising certificate and to whom they will apply
 - details to be included in a practising certificate and on the BSB Register
 - circumstances where a practising certificate will not be issued
 - circumstances where a practising certificate may be refused or revoked
 - arrangements for review of contested decisions
 - changes for those registered under rule 206 of the Code of Conduct, and
 - changes for those wishing to apply for exemption under 1102 and 1104 of the Code of Conduct.
8. Specifically the rules and Code amendments introduce:
 - a requirement that a barrister must not carry out a reserved legal activity unless they are authorised to do so by a practising certificate
 - a requirement for barristers to notify the Records Office of any change in the details of their practising certificate application within 28 days, for example, ceasing practise, changing practising status, moving chambers or employer
 - barristers are responsible for the contents of their application for a practising certificate and information submitted by them or on their behalf, for example by their clerks
 - the Bar Council may request appropriate additional information in order to consider the application, for example evidence of insurance or income, and
 - any barrister who undertakes to pay their practising certificate fee and fails to do so, will have their practising certificate revoked if they continue to fail to pay.
9. The new rules do not:
 - provide details of the fees, surcharges, discounts and process for referral to the BSB's Professional Conduct department if a barrister is considered to be

practising without being authorised to do so; this will be outlined in the Schedule of Practising Certificate Fees

- remove the requirements for barristers to comply with further Code requirements. Although practising certificates will state whether barristers are “authorised” to undertake reserved legal activities, barristers will still need to comply with further Code requirements (e.g. the “three year” rule for rights of audience) in order to actually be entitled to exercise them, or
- change the circumstances in which a barrister needs a practising certificate. It therefore remains the case that a barrister needs a practising certificate if they are practising as a barrister, which is defined under rule 201 the Code of Conduct as follows:

201. For the purposes of this Code a barrister practises as a barrister if:

(a) he supplies legal services and in connection with the supply of such services:

(i) he holds himself out or allows himself to be held out as a barrister; or

(ii) he exercises a right which he has by reason of being a barrister; or

(b) he acts as a manager of an Authorised Body and as such is required by the rules of that body’s Approved Regulator to hold a practising certificate issued by the Bar Council;

(c) and any reference to the supply of legal services includes an offer to supply such services.

Process changes – what are the Bar Council and Bar Standards Board doing?

10. The new rules will be accompanied by considerable changes to our procedures and have a major impact upon the organisations, how we operate and the advice we provide to barristers.

- we have aligned the practising certificate years from 1 April to 31 March for self-employed and employed barristers
- the new core database will enable barristers to create their own online account and complete the authorisation process. Barristers will receive details about setting up their accounts in 2012
- the online process will be supported by guidance to assist users of the system
- we are training our staff and setting up a helpline to assist the Bar
- we have developed a communication programme, both internally and externally to communicate these changes to staff, the profession, chambers and employers, and
- all sections of the Bar Council and BSB which will be significantly affected by these changes have developed their own work programmes to prepare themselves for the change.

Process changes – what do barristers have to do?

11. The new rules will considerably change the process of applying for a practising certificate for barristers:

- barristers will have to set up their online account either to complete the process or to delegate permission to their chambers or employer to complete authorisation on their behalf
- almost all applications will be made online, although those who are unable to do so due to a disability will be able to submit a hard copy application
- paying the practising certificate fee alone will not ensure that a barrister is authorised to practise, and
- during the new process barristers will be required to:
 - verify current contact details
 - verify practising status and entitlement to exercise reserved legal activities
 - confirm completion of the requisite number of continuing professional development (CPD) hours
 - declare that adequate indemnity insurance has been obtained and paid
 - pay the practising certificate fee, and
 - sign a declaration of truth, which is designed to ensure understanding of the process and new system.

Insurance

12. All barristers will be required to complete an insurance declaration confirming that they have adequate insurance in place to cover all aspects of their work as a barrister. For employed barristers this will relate to their employer's insurance. Government barristers are not required to hold insurance, so they will need to confirm that they have regard to the insurance requirements of the Code of Conduct, though adequate insurance in these cases equates to not requiring insurance for the role.

CPD

13. All barristers will be asked to confirm whether they are up to date with the CPD requirements and have submitted a Record Card as required under the current Annexe C of the Code of Conduct. For 2012 and 2013 (pending the outcome of the CPD Review) any barrister who has not completed the CPD hours, will not be refused authorisation. However, they will be asked to list what action they are taking to remedy the situation.

Timetable and non-compliance

14. Barristers will receive their practising certificate renewal notice in February 2012.
15. Current practising certificates expire at the end of March 2012. Any barrister who has not completed all or part of the new process by 1 April 2012, will be required to pay a surcharge (subject to approval from the Finance and Audit Committee) if renewal is completed during April 2012. Barristers who fail to complete the process by 1 May

2012 will be removed from the BSB Register, thereby giving third parties a reason to question a particular barrister's right to practice. These barristers will be reported to the BSB, which may raise an own motion complaint against them and take such disciplinary action as is considered appropriate.

What can committees do?

16. Committees have an important role to play in assisting with the implementation of these changes.
17. They can:
 - ensure that they consider the impact of the changes on their work
 - communicate with their colleagues about these changes where possible, with the message that these changes are necessary to ensure compliance with the Legal Services Act 2007, and
 - emphasise to their colleagues the importance of complying by the end of March 2012, as non-compliance increases the amount of staff time needed to deal with the matter, thereby increasing costs to the regulator and ultimately the profession.

Further information

18. The new rules and changes will have an impact upon the work of some committees more than others, for example the Qualifications Committee will have a particular involvement, considering applications for review of decisions by the Records Office and for deciding whether to issue temporary practising certificates. The Complaints Committee will consider cases based on the new rules. For many committees these changes will have limited or no impact upon their work.
19. If any committee would like further information on the new rules and procedures, please contact Dawn Elvy: DElvy@BarCouncil.org.uk.

Authorisation to Practise Project Group
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