

BAR
STANDARDS
BOARD

REGULATING BARRISTERS

Application by the Bar Standards Board to the Legal Services Board under Part 3 of schedule 4 to the Legal Services Act 2007 for the approval of draft Part 4 Qualification Rules: rQ1-rQ40 of the BSB Handbook.

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Section A - What are the proposed changes?

1. This application asks the Legal Services Board (“LSB”) to approve new Part 4 Qualification Rules: rQ1-rQ40 of the Bar Standards Board (“BSB”) Handbook (annex 1).
2. This application refers to the Part 4 regulations (rQ1 - rQ40) of the BSB Handbook as “the Qualifications Rules”. The Qualification Rules will apply to all individuals who wish to be called to the Bar and to be authorised as a barrister. The new rules will also apply to any education and training provider wishing to become a BSB-authorised education and training organisation.
3. As part of the application, we attach at annex 2, consequential amendments to the Handbook as a result of the new rules; this includes several changes to Part 6 definitions.

Background to the FBT programme and reforms

4. Over the last few years, the BSB has been reviewing the way in which barristers in England and Wales train and qualify. This process of research, consultation, review and regulatory change is known as our Future Bar Training (FBT) programme.
5. Having consulted widely on the policy proposals underpinning the FBT reforms, we are seeking approval of the regulatory arrangements that introduce the new training and qualification requirements.
6. The following timeline shows the key milestones in the FBT programme, including public consultation periods and dates when decisions were taken.

2013: The Legal Education and Training Review

7. The Legal Education and Training Review (LETR) was a joint project of the Solicitors Regulation Authority (SRA), the BSB and CILEx Regulation. It constituted a fundamental, evidence-based review of education and training across regulated and non-regulated legal services in England and Wales.

2014: The Future Bar Training programme

8. The Future Bar Training Programme (FBT) was launched in response to the LETR. The FBT work built on reforms to education and training for the Bar which had already taken place between 2006 and 2012, based on reviews led by Derek Wood QC (the “Wood Reviews”).
9. The FBT programme has focused on:
 - how training should be regulated to best meet the needs of professional practice;
 - ensuring that regulatory requirements do not restrict access to the Bar;
 - ensuring that the requirements for education and training are targeted on the desired outcomes and are proportionate; and

- maintaining the standards which must be met at the point where someone is authorised to practise.

2015: Consultation – The Professional Statement for Barristers

10. In February 2015, we published [our vision for the future of training for the Bar](#). Over the course of 2014 and 2015, we delivered five focus groups, across the country and involving representative bodies, members of the profession, legal academics and consumer representatives to develop the draft Professional Statement. Our consultation was launched in June 2015.
11. Following the closure of the consultation, we first published the Professional Statement for Barristers in October 2015. This describes the knowledge, skills and attributes that a newly qualified barrister should have when issued with a Full Practising Certificate. The development of the Professional Statement gives an end-point for all education and training to qualify as a barrister and clearly states the outcomes required for practice as a barrister.

2015: Consultation – A new scheme for Continuing Professional Development

12. Our key objective in developing the new CPD scheme was to encourage barristers to maintain professional and ethical standards at the Bar in a way which, through greater flexibility in our regulation, encourages barristers to take ownership of their learning and development.
13. The new CPD scheme, introduced in January 2017, replaced the hours-based system.

2015: Consultation – The three stages of education and training

14. In July 2015, we issued our wide-ranging [consultation paper on the academic, vocational and professional stages of training](#). It considered the role of higher education and professional training providers in delivering high quality education and training to meet the needs of the profession and society, given the important role legal services professionals play in the administration of justice.
15. The review recognised many good features in the current system for training barristers. But it also looked to the future and recommended reform so that training would be better matched to barristers and clients in 2020 and beyond.

2016: Consultation – The Professional Statement for Barristers (including threshold standard and competences)

16. In March 2016, we put out to consultation the Professional Statement, now including the threshold standards (minimum standard to which the competences must be performed on ‘day one’ of practice) to meet the required competences.
17. The threshold standards were designed to protect clients, preserve the trust and confidence which the public places in the profession and facilitate the administration of justice, whilst recognising that a newly-authorized barrister cannot be expected to work at the same level as one who has practised for some years. The LSB’s Statutory

Guidance on Education and Training requires that regulators set standards that “find the right balance between what is required at the point of authorisation and what can be fulfilled through ongoing competency requirements”.

18. Following the consultation’s closure, we published the [Professional Statement for Barristers incorporating the Threshold Standards and Competences](#) in October 2016.

2016: Consultation – Future routes to authorisation

19. In October 2016, we launched a consultation describing three different regulatory approaches to how students might train to be authorised. The three approaches consulted on were:
 - *Evolutionary Approach* – this model would retain the sequential model of the academic, vocational and professional stages but offered changes to the way education and training might be delivered within the single, three-stage, pathway.
 - *Managed Pathways Approach* – this model would allow for a number of pathways to be proposed. The BSB could authorise providers to deliver one or more “components” of training in a given pathway.
 - *Bar Specialist Approach* – this model would introduce a set of centralised entrance exams for knowledge and application of legal knowledge and procedure. If passed, a shortened skills course would follow.
20. During the consultation, we acknowledged another proposal put forward by the Council of the Inns of Court (COIC) and the Bar Council proposing to split the vocational component into two parts: a knowledge part which would be completed and assessed prior to undertaking a skills part, focusing on advocacy and other soft skills. Following receipt of the detailed proposals, we added the information to the consultation and confirmed that we would consider authorising such a training programme if the Managed Pathways approach was adopted.
21. In this consultation, we set out the four principles which would be key to determining our future reform programme. These four principles are: encouraging greater flexibility, improving accessibility, improving affordability and maintaining high standards.
22. We hosted a number of events around the country and online to listen to what our stakeholders had to say about the issues raised (see Figure 1 below). This led to us receiving over 1,000 responses to the consultation.

Figure 1: Engagement activities – Futures routes to authorisation

Public Statement on FBT announced	2 May 16
Legal Services Consumer Group Workshop	2 June 2016
Stakeholder “debate” event	7 July 2016
BPTC Conference with FBT workshop	15 July 2016
FBT Roadshow – London (students only)	25 October 2016
FBT Roadshow – London	25 October 2016
FBT Roadshow – Manchester	27 October 2016
FBT Roadshow – Newcastle	1 November 2016
FBT Roadshow – Leeds	2 November 2016
BSB / Bar Council – Joint Education and Training Committee meeting	8 November 2016
FBT Roadshow – Nottingham	9 November 2016
FBT Roadshow – Birmingham	10 November 2016
FBT Roadshow – Cardiff	16 November 2016
FBT Roadshow – Bristol	17 November 2016
Student event for BPTC students - London	24 November 2016
Young Bar Council discussion	25 November 2016
Publication of COIC / Bar Council Addendum to consultation	1 December 2016
Kings College London event: Impact of regulatory reform at the Bar on the study of law	19 January 2017

2017: Consultation – Shaping the education and training requirements for prospective barristers

23. In October 2017, we launched a consultation seeking views on a number of further aspects of the way in which barristers train and qualify. This included:
- to what extent the BSB should prescribe the role of the Inns of Court in the training and qualification of barristers;
 - the future rules and regulatory arrangements for pupillage and other forms of work-based learning; and
 - a draft of a new framework to enable training providers to develop new and innovative training programmes for aspiring barristers.
24. We hosted a number of events around the country and online to listen to what our stakeholders had to say about the issues raised (see Figure 2 below). This led to us receiving around 150 formal responses to the consultation.

Figure 2: Engagement activities - Shaping the education and training requirements for prospective barristers

Publication of consultation	03 October 2017
FBT Roadshow – London Seminar	14 November 2017
FBT Roadshow – North-eastern seminar (Leeds)	16 November 2017
FBT Roadshow – Northern seminar (Manchester)	21 November 2017
FBT Roadshow – Western seminar (Bristol)	30 November 2017
FBT Roadshow – Midlands seminar (Birmingham)	06 December 2017
FBT Roadshow – Wales and Chester seminar (Cardiff)	12 December 2017
FBT Webinar (online)	13 December 2017

2018: Consultation – New Part 4 Qualification Rules

25. In July, we published a consultation on new Part 4 Qualification Rules to replace the existing Part 4 rules. A total of 6 responses were received from stakeholders. These were from five representative organisations and one individual barrister¹. The representative organisations that responded were:

- The Bar Council;
- The Council of the Inns of Court;
- The Legal Services Consumer Panel;
- BBP Law School; and
- The Bar Association for Commerce, Finance and Industry (BACFI).

What are the key policy changes?

26. The key policy changes we are introducing to implement the education and training reforms are:

- the introduction of future routes to authorisation - the “Managed Pathways” approach (and introduction of an Authorisation Framework). This will provide greater flexibility in the delivery of training, whilst retaining those elements of prescription that are necessary in order to meet the outcomes in the Professional Statement (such as basic legal knowledge, graduate-level academic education and work-based learning);
- a review of the role of the Inns of Court, which recognises the important role that the Inns can have (particularly in promoting social mobility and communities of practice) but notes the need for greater BSB oversight and assurance in relation to call to the Bar; and
- future arrangements for the provision of pupillage, which seeks to build on what works well in the current, but with greater flexibility and more focus on outcomes.

Introduction of the “Managed Pathways” approach

27. As a risk-based regulator, we have comprehensively reviewed the three stages of training and considered our responsibility in setting the minimum standards for all barristers – this is the purpose of the Professional Statement. Any further regulatory interventions have been critically assessed to ensure they are necessary and proportionate to ensure the outcomes of the Professional Statement and our 4 key principles of flexibility, accessibility, affordability and maintaining high standards. This section sets out the issues raised in response to our consultation and the rationale for the decisions taken to develop new routes to authorisation.

28. Our 2016 consultation set out three different regulatory approaches to how students might train to be authorised. The three approaches consulted on were:

¹ This respondent wished to remain anonymous.

- *Evolutionary Approach* – this model would retain the sequential model of the academic, vocational and professional stages but offered changes to the way education and training might be delivered within the three-stage system.
 - *Managed Pathways Approach* – this model would allow for a number of pathways to be proposed. The BSB could approve proposals for providers to deliver one or more “components” of training.
 - *Bar Specialist Approach* – this model would introduce one set of entrance exams for knowledge and application with a shortened ‘skills’ course following successfully passing the exams.
29. As part of the consultation, we also said that regardless of the chosen approach, a number of policy positions would not change. These were:
- A general expectation that the Bar would remain a graduate profession and normally meet the minimum degree classification of 2:2;
 - Students would need to pass an aptitude test and BSB centralised assessments;
 - We should reduce to a minimum our regulatory involvement in academic legal education (ie the “Qualifying Law Degree” or “Graduate Diploma in Law”² under the current system);
 - We should continue to pursue as much of a common agenda with other legal regulators, and the SRA in particular, as can be achieved in pursuit of our principles; and
 - During any transitional period between our final decision on future pathways in spring 2017 and the coming into force of a new system, reforms to the current education and training arrangements would continue.

Key issues during the consultation

30. One of the key issues during this consultation was whether the BSB should retain a single “pathway” approach. Many respondents suggested the existing route was “tried and tested” and it was the benchmark for high standards. Such respondents argued that by opening up multiple “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. Additionally, a significant majority argued that the BSB should only authorise the route suggested by COIC and the Bar Council³.
31. These issues were explored at great length in our equality impact analysis and were discussed when the BSB Board (the Board) decided to adopt the Managed Pathways approach. Whilst we acknowledge the risk that one pathway could emerge as the favoured route, our proposed authorisation and quality assurance processes will enable us to be satisfied that all routes lead to the same minimum outcomes and any variation in popularity would be driven by student choice, cost and course delivery as a

² A Graduate Diploma in Law may be used with another degree to satisfy the requirement.

³ This was a variation on the current pathway that would involve splitting the BPTC into two parts. We made clear that this option would be possible under the Managed Pathways approach

whole by the provider. To further mitigate against such risks, we limited the number of pathways that might be developed and settled on the four illustrative “pathways” which are now set out in the Authorisation Framework. Moreover, we committed to ensuring that there would be high quality information available about the various pathways for students to have an informed view.

Rationale for the “Managed Pathways” approach

32. In March 2017, we announced the Board’s decision to pursue a [“Managed Pathways” regulatory approach](#). In deciding in favour of this approach, the Board considered responses to the consultation and the ability of each of the three approaches to meet both the requirements of the Professional Statement and our regulatory objectives.
33. Whilst there was some support from respondents for the Evolutionary approach, there was significant concern that by only authorising this one pathway, we would not enable the flexibility and accessibility sought in order to promote greater access and diversity among those seeking to become barristers. As such, this option as the exclusive pathway to qualify was ruled out.
34. There was minimal support from respondents for the Bar Specialist approach. Whilst some respondents liked the consistency of more centralised examinations, most respondents thought that a shortened skills course would not be sufficient in preparing students for the rigours of pupillage and practice.
35. As a whole, we were not convinced of the benefits of having a series of centralised examinations that do not allow students to demonstrate the full depth of knowledge and skills in an environment meant to simulate the realities of practice. The Board decided that this option failed to deliver the outcomes that a more mixed approach would.
36. The Board favoured the Managed Pathways approach because it offered the benefits of centralised assessments and was able to assure standards by moving away from the highly prescriptive Bar Professional Training Course (BPTC) model and empowering training providers (of academic, vocational and work-based learning components) to offer significantly different training programmes, so long as they met the requirements of the BSB’s Authorisation Framework. It was important for the BSB to specify the curriculum and assessment for the vocational and work-based learning components, without which there was a risk that authorised persons may carry out reserved legal activities without having met the standards expected of them, with a detrimental impact on the justice system. Another benefit was that the flexibility inherent in the approach meant that the BSB could react more easily to authorise different pathways in the future (including, for example, modular or apprenticeship pathways) making it responsive to changes in the market.
37. In undertaking an equality impact analysis, we found that the Managed Pathways approach has the capability to offer more flexible ways to train, but with the support of being on a clearly defined training route approved by the BSB. This has the benefit of promoting student choice and may in particular help students with health concerns or disabilities to find a method of delivery that suits their needs. A more detailed equality impact analysis can be made available upon request.

Pupillage and other forms of work-based learning

38. In discussions about the relative strengths and weakness of each approach, one constant was the need for a component of training which prepared prospective barristers for practice as an advocate in a predominantly self-employed environment. This was a feature of discussion throughout the 2015 and 2016 consultation periods with many arguing that pupillage provides a link between learning legal knowledge and procedure and formal practice as a barrister.
39. Though it may be offered in new ways in the future the Board decided it should be retained as a mandatory component of training, also acknowledging that will be improved upon through the introduction of the Professional Statement.
40. In addition to the overarching Managed Pathways approach, we also confirmed that several features of any new system would remain unchanged; these include the following:
 - Call to the Bar: s207(1) of the LSA 2007;
 - A degree will continue to be required and minimum degree classification should normally be lower second class;
 - Foundations of Legal Knowledge should be retained in the academic component of training;
 - The Bar Course Aptitude Test and BSB-controlled centralised assessments would remain mandatory.

Call to the Bar

41. The Board saw no significant reason to seek to change the definition of a barrister as an individual called to the Bar by one of the four Inns of Court, as set out in s207(1) of the Legal Services Act 2007. Aside from the fact that this would require primary legislation, the Board decided not to seek changes to the legislation as a review and consultation into the future role the Inns was to begin shortly thereafter. In 2018, the Board (for reasons discussed at paragraphs 52-55) saw value in the Inns in order to promote social mobility and a 'community of practice'. This is particularly beneficial given the predominantly self-employed nature of practice at the Bar.

The Bar as a graduate profession

42. The Board decided that the reasoning, critical thinking and research skills gained from a degree were a mandatory requirement, whether in law or otherwise. However, the Board was not convinced by respondents to the consultation that the minimum award should be raised, suggesting that this may be a disproportionate response that might limit access to the profession. Some, albeit in small numbers, qualify for the Bar with a lower second class degree. Depending on the pathway being developed, the degree may not be awarded by a university in the traditional way (for example if an apprenticeship pathway is being developed, the training may be accredited by a higher education institution). The BSB would, however, retain the ability to waive requirements or recognise equivalence in exceptional cases.

Foundations of legal knowledge

43. The consultation discussed whether there remained a need to continue prescribing specific subjects in the study of academic law. The Board agreed there was a need for a common foundation of legal knowledge for all practising barristers, particularly as the Professional Statement states that barristers will:

“Have a knowledge and understanding of the key concepts and principles of public and private law” (s1.2 Professional Statement).

44. The required content of an academic law degree would be determined by the level of regulatory intervention needed to ensure minimum standards. For public protection purposes, there remained a need to retain the seven foundation subjects and the skills associated with legal research work such as legal research. However, the Board noted the Quality Assurance Agency’s subject benchmark statement for law (or any successor form of assurance to the same effect) and decided that if that were complied with there would be no further need for intervention by the BSB in the academic component of training.

The Bar Course Aptitude Test (BCAT)

45. The BCAT will also be retained. In determining whether the BCAT should remain mandatory, the Board considered a 2016 [review of the BCAT](#) which looked into three areas:

- the performance of BCAT as a predictor of a student’s future performance on the BPTC;
- the impact of BCAT – at the then pass rate - in preventing weaker students from starting the BPTC; and
- the likely equality and diversity implications of raising the pass mark, and the level to which it could be safely be raised without introducing an unacceptable risk of discriminating against students from non-traditional backgrounds.

46. Three important conclusions were drawn from the review. First, a student’s BCAT score⁴ is a very strong predictor of their performance on the BPTC. Second, by increasing the pass score, students who could not expect to pass the BPTC (approximately 16.6%) would be prevented from joining the course. Third, an optimal score of 45 was chosen (scores of 44,45 and 46 were investigated for equality impacts) finding that only a score of 46 would have significantly adverse impacts on protected characteristics (ethnicity only).

47. The Board noted that the initial pass score (previously approved by the LSB) may have been set too low to achieve the intended outcomes and that the scheme would be reviewed again, based on the new score, once there was sufficient evidence as to its effectiveness.

Centralised assessments as part of the curriculum and assessment strategy

48. At the time of the 2016 consultation we had not yet reviewed the curriculum and assessments. However, having been introduced recently, we believed there was

⁴ Actual score rather than pass/fail indicators.

continuing need to retain some centralised assessments. The need to retain centralised assessments stems from a need to protect the public and consumers and ensure consistency in competence is achieved in certain areas. As part of the consultation, we committed to reviewing the way in which ethics is taught and assessed.

49. In May 2018 the Board approved a new curriculum and assessment strategy, which will form part of the Authorisation Framework. The paragraphs that follow provide a timeline for the changes being introduced by the new Curriculum and Assessment Strategy.

From Academic Year 2019/2020:⁵

- increasing flexibility for AETOs by removing the current requirement for the vocational component to include options. Although AETOs will still be able to offer options if they wish, this change could increase affordability for students because it means AETOs will be able to offer shorter courses if they wish;
- including legal research within the existing Opinion Writing component of the curriculum - both aspects will be assessed via a “take-home assessment”, the details of which have yet to be finalised;
- continuing to require that Advocacy, Drafting and Conference Skills be assessed locally by AETOs, although the BSB will introduce new oversight arrangements and high-level outcomes to improve consistency in the way in which these subjects are assessed;
- changing the rules to permit an unlimited number of attempts at each assessment within a maximum period of five years (subject to an AETO’s own internal regulations permitting this);
- removing the current “Very Competent” and “Outstanding” grade boundaries from centralised assessments and thus focusing the outcome of a student’s performance on whether they have achieved the minimum threshold standard required. (This will not prevent an AETO from describing performance differently in the qualifications they award);
- removing current prescription in the delivery of the vocational component in areas such as formative assessments, class sizes, staff to student ratios, and session design and delivery.

In line with other changes to the flexibility of pupillage, including the replacement of the Pupillage checklist with the Professional Statement (Autumn 2019):

- removing the current requirement to complete a course in Forensic Accounting⁶ and Practice Management (although the equality and diversity aspects of the current Practice Management course will be covered as part of Professional Ethics during both the vocational and pupillage or work-based components); and

⁵ NB this will only apply to new courses authorised under the AF which start in 2019. In practice the BPTC will still be delivered by current providers in 2019/20 so current BPTC regulations will apply to them for 2019/20, and it is therefore likely that the only new courses which may be authorised to start in 2019 will be combined academic and vocational courses where the vocational elements will not be assessed until at least Academic Year 2020/21.

⁶ Subject to winding this down with the provider, we will remove this requirement as quickly as possible.

- new minimum pupillage funding award amount will be introduced.

From Academic Year 2020/2021:

- splitting the centralised assessment of Civil Litigation into two papers – Civil Litigation I will be closed book assessment and Civil Litigation II an open book assessment. Both will include elements of civil dispute resolution;
- increasing the number of sittings each year for the centralised assessments from two to three, in April, August and December; and
- introducing the assessment of Professional Ethics by AETOs during the vocational component, with high-level outcomes set by the BSB but giving AETOs freedom to devise their own assessment (including integrating it with other assessments) provided that it has its own discrete assessment element which is graded as either “competent” or “not competent”.

From Academic Year 2021/22:

- introducing a BSB centrally set and marked examination in Professional Ethics during pupillage or work-based learning, to be an open book exam, thus better reflecting the real-life environment in which ethics must be adhered to during practice;
- allowing only candidates who have been in pupillage or work-based learning for a minimum period to sit the assessment in Professional Ethics, to ensure they have the benefit of context from their experience;
- allowing prospective candidates a minimum of three opportunities to sit the centralised Professional Ethics assessment;
- maintaining the current Advocacy course that must be taken during the non-practising period of pupillage or work-based learning but opening this up to providers other than the Inns; and
- introducing a new compulsory course on Negotiation Skills during the non-practising period of pupillage or work-based learning.

The Authorisation Framework

50. In the 2016 consultation, we said that we were working to develop an Authorisation Framework which would enable us to assess whether training proposals meet the requirements set out in the Professional Statement. A draft of this was included in the 2017 consultation showing progress to date. In May 2018, we issued a [policy statement](#) on the Authorisation Framework.
51. The Authorisation Framework sets minimum requirements for organisations seeking authorisation by the BSB. It also helps AETOs, including those only interested in offering pupillage, to understand what their proposals need to address (including the Professional Statement) and will enable us to assess those proposals to determine whether they are fit for purpose. The [Authorisation Framework](#) can be found on the BSB website.

The role of the Inns of Court

52. We issued a Policy Statement in March 2018 confirming the [role of the Inns of Court in Bar training](#). The Statement also clarified our role in the oversight of student barristers and confirmed that new, more robust checks will be introduced to help determine the suitability of everyone being Called to the Bar in future.
53. Having confirmed in 2017 that the BSB would not seek a change to the statutory definition of a barrister, the BSB considered, from first principles, the role of the Inns of Court in the education and training of barristers. In doing so, we considered that the overall positive equality and social mobility benefits of student membership – in gaining access to the various scholarships, mentoring, access schemes and qualifying sessions – was particularly beneficial for students from lower socio-economic groups.

Fit and proper person tests and student conduct

54. Having decided that student membership should remain mandatory, we considered whether certain roles undertaken by the Inns might be better done directly by the BSB (for example fit and proper person and DBS checks and student conduct). We concluded that it would be disproportionate for the BSB to do these things directly because it was not an effective use of our 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.) Prior to that, the Inns have a closer relationship with students and are able to observe their behaviour over a period of time whilst they are student members. It would not be appropriate for the BSB to take on that pastoral role and it would be a significant undertaking for the BSB to put processes in place to vet every student. However, we agreed 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. Ultimately, the BSB will assert greater oversight of the process and will set minimum requirements (and a scheme of audit and supervision) in an MoU to be agreed between the COIC, each of the Inns of Court and the BSB. This seeks to ensure that those activities that form part of our regulatory arrangements are subject to proper (and proportionate) oversight by the BSB. The MoU is currently being finalised and we expect it to be signed in early 2019, ahead of the LSB's approval of the rules. We will share it with the LSB in due course.

Qualifying sessions

55. Qualifying sessions were a focal point for many respondents to our consultation. In reviewing whether they should remain mandatory in future, the Board considered from first principles the need for and purpose of the qualifying sessions, the topics they should cover and the extent to which they might be undertaken by providers other than the Inns. In doing so, the Board considered the challenges in ensuring diversity at the Bar, the nature of practice at the Bar (including the fact that the majority are self-employed practitioners) and the important role that barristers play in protecting and promoting the public interest, the justice system and the rule of law. It concluded that for all these reasons, there was a benefit in promoting a 'community of practice' that could (amongst other things) expose trainees to more experienced practitioners and judges. This could help to promote and embed ethical behaviour and provide pastoral

and career support (particularly for those from 'non-traditional' backgrounds, with low social capital). The Board felt that the Inns were uniquely placed to promote this community of practice and that the precise mix of access to practitioners and judges could not be replicated by an alternative provider. Thus, the qualifying sessions should be retained but the BSB would develop a framework to ensure that students would benefit from the support on offer which strengthens the vocational component. In particular, the sessions would have to be educational in nature, covering (among other things) subjects such as the justice system, the rule of law and a barrister's role in the promotion of the professional principles, equality and diversity, ethics and standards, advocacy and wellbeing. In addition to this, they could be used to help students in preparation for pupillage and a career in self-employed practice, which presents unique challenges for young professionals (especially those lacking social capital). It was noted that some such subjects are requirements of the Professional Statement that may not be met if not provided through the qualifying sessions.

Future arrangements for pupillage

56. Having previously decided to retain pupillage as mandatory component of training, our 2017 consultation considered further improvements to improve flexibility and accessibility for students. The changes explored related to following aspects of pupillage:

- the authorisation of AETOs to provide pupillage;
- the duration of pupillage and other forms of work-based learning;
- the point at which a pupil may apply for a Provisional Practising Certificate;
- the ratio of pupils to pupil supervisors;
- pupil supervisor training;
- the minimum pupillage funding award; and
- the removal of the automatic waiver from the pupillage funding requirements for transferring lawyers.

Authorisation of AETOs to provide pupillage

57. In May, the Board agreed to several changes to the work-based learning component of training. These changes align arrangements for pupillage with our approach to the vocational component – to ensure standards are met by focusing on the outcomes of training and removing barriers where they are unnecessary.

58. The current Handbook rules set out the requirements for chambers and other organisations offering pupillage. These rules do not allow providers of training the flexibility sought by our reforms in this area nor do they support the BSB's aim to authorise AETOs against a common set of criteria – the Authorisation Framework. Under the new rules, all new AETOs (including those only offering work-based learning) will be authorised against the Authorisation Framework.

59. For those currently offering pupillage, there is currently no re-authorisation process. The Board agreed that there ought to be a risk-based exercise for the re-authorisation

of chambers and employers as AETOs under the new system. This will ensure the BSB has accurate information on those currently offering pupillage. Those who fail to comply with such reasonable requests for information will have their ability to offer pupillage revoked. Following this initial re-authorisation, ongoing supervision will lead any activities relating to the provision of work-based learning, holding AETOs accountable for delivering against the Authorisation Framework. This approach is proportionate as it enables us to target our resources on training providers which pose the greatest risk of non-compliance. AETOs will have to notify the BSB of any material change in their pupillage or work-based learning arrangements.

Design and delivery of pupillage and other forms of work-based learning

60. The delivery of pupillage has, until now, been heavily prescriptive and reliant on outputs and checklists rather than outcomes. The introduction of the Professional Statement and the need for AETOs to develop new programmes aimed at achieving those outcomes is one of the key drivers of our reforms. It is also intended that, by removing existing prescription for the delivery of pupillage (i.e. overall duration of pupillage/duration of non-practising period of training and ratio of pupils to pupil supervisors), AETOs will develop new training plans that best meet the requirements of the Professional Statement. In May the Board agreed changes in respect of the following areas.

Duration of pupillage and other forms of work-based learning

61. In future, AETOs will be able to determine - based on their training programme developed to meet the requirements of the Professional Statement, the overall length of pupillage. Most respondents to our consultation argued in favour of retaining the twelve-month duration; others thought the new flexibility would be welcomed, especially if there were a minimum and a maximum number of months within which to operate.
62. The Board agreed that the current duration (twelve months) of pupillage would normally be the right length of time needed and there were possible disadvantages for pupils to extending this (in particular for those from lower socio economic groups who may struggle financially with a longer period of training.) However, it agreed this should not be prescriptive. Whilst it was unlikely that pupillage could be delivered in fewer than 12 months without taking prior training into account via a waiver, there might be circumstances where a longer period of training (up to a maximum of 24 months) could be appropriate. It would be for an AETO to justify a period of longer than 12 months as part of the authorisation process.

Provisional Practising Certificate

63. In line with the above, it was also agreed that there should be more flexibility in when the practising period of pupillage should begin. The normal duration of the non-practising period of pupillage or work-based learning will remain the same - six months for full-time 12-month pupillages. A provisional practising certificate can be applied for

after this time. An AETO may exceptionally apply for a variation to this norm as part of the authorisation process.

Pupil to pupil supervisor ratio

64. Other changes will permit supervisors at the self-employed Bar to supervise up to two pupils (one practising and one non-practising). Greater flexibility will be permitted in the structure of pupillage supervision for the employed Bar, subject to approval through the authorisation process. This acknowledges that the line management and organisational structures will be different in employed practice and will give the employed Bar the opportunity to design supervisions arrangements that appropriate for each provider.
65. Several representative bodies responded to our consultation suggesting that the increased flexibility (to the self-employed Bar) would diminish the relationship between a pupil and pupil supervisor and that a supervisor may not have enough time adequately to supervise more than one pupil at a time. In deciding in favour of the proposal, the Board acknowledged that many may not take advantage of the flexibility but that it may help some chambers to deliver pupillage, whilst avoiding a sense of competition between two pupils at the same stage of pupillage.
66. In deciding to enable these changes, we have taken into account views from the profession that the arrangements should be proportionate for small, self-employed practices. Our reforms now place the responsibility on training providers to give a rationale for how they will deliver work-based learning. We believe training providers are best placed to determine how they meet requirements, subject to BSB authorisation and supervision.

Pupil supervisor training and accreditation

67. Training for pupil supervisors will also change. Our own research and feedback from pupils suggest that a coherent set of outcomes for training should be prescribed but it may be disproportionate for the BSB to accredit or authorise training providers or certify pupil supervisors. Instead, our approach is to set the training outcomes to be delivered and for AETOs to provide assurances to the BSB as to the suitability and competence of those put forward as pupil supervisors and we will provide guidance for AETOs to do so⁷. This also means there will no longer be a requirement for the Inns of Court to approve pupil supervisors, as is the case now. Supervisors will also be required to undertake mandatory refresher training every five years, or after three years for someone who has not supervised any pupils in the intervening time.

Pupillage funding requirements and automatic exemptions for transferring lawyers

68. Although it does not require a change to our existing funding rules for pupillage, the Board agreed that the new minimum award should be reviewed annually and set using the Living Wage Foundation's recommended wages as the benchmark. We

⁷ Guidance for AETOs will include how the AETO might satisfy itself that the prospective supervisor is both competent (based for example on number of years and nature of practice) and suitable (checking for example that no disciplinary matters have been found which might call into question their suitability to be a supervisor).

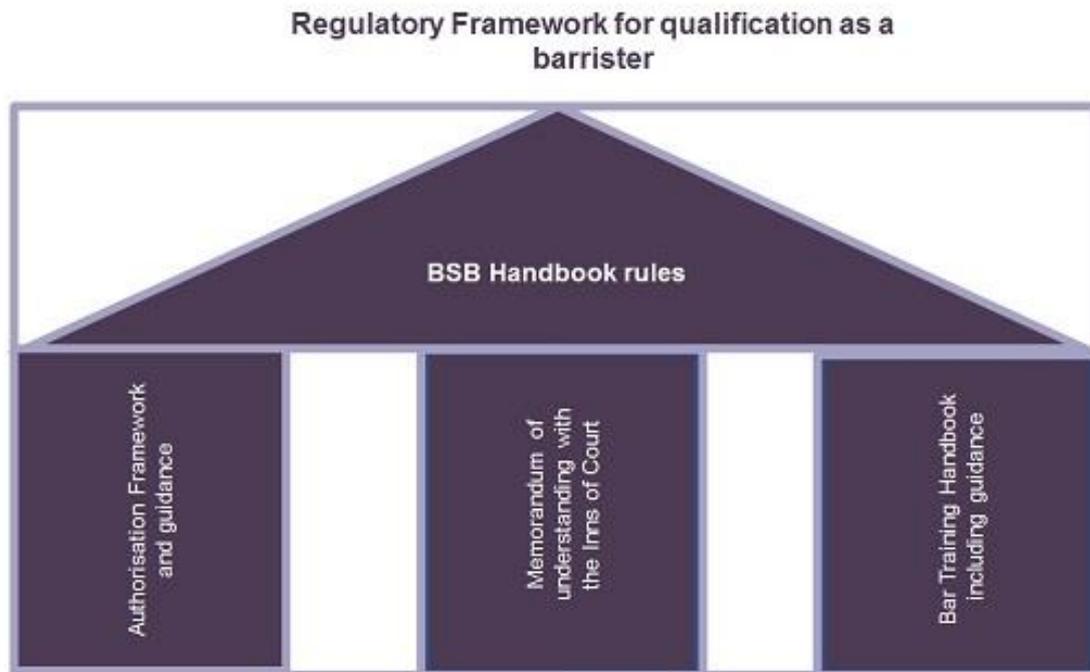
considered this to be a proportionate response, aligning with the accessibility and affordability principles for our reforms, to ensure those seeking a career at the Bar are able to do so without facing financial hardship during pupillage.

69. Equally, we have also confirmed that transferring lawyers will no longer receive an automatic exemption from the pupillage funding rules. This measure will ensure all pupils are given an award for their time undertaking pupillage. However, depending on circumstances and external funding arrangements, AETOs may apply for waivers in exceptional cases.

What are we proposing for the new Qualifications Rules framework?

70. Given the substantial policy changes outlined above, our Handbook rules need to support the new system. That also means that they too must be focused on setting a framework for education and training providers to deliver against outcomes specified.
71. The new rules will set the high-level framework for our new arrangements. In drafting them we have sought to retain only those matters that are most appropriately dealt with in rules. More detailed requirements will be dealt with elsewhere, for example:
 - The rules refer to the Authorisation Framework, which will set out the detailed arrangements for approving AETOs to provide components of the training pathways permitted by the BSB.
 - The rules require the BSB to set out a number of requirements in relation to the activities of the Inns of Court. These, and any other activities undertaken by the Inns, will be detailed in an MoU between the BSB, COIC and the four Inns of Court. The new rules, combined with the Authorisation Framework and MoU, give the BSB certainty around the administration of the arrangements. We do not believe it is appropriate for such arrangements to be dealt with in the BSB Handbook, as the Inns are not bound by the Handbook (unlike barristers, students or AETOs.) For the avoidance of doubt, we do not consider that the Inns of Court need to become AETOs to deliver Qualifying Sessions.
 - The BSB will also provide a supplementary document, a Bar Training Handbook, which will set out some of the underlying detail that is expected in relation to implementation of training programmes, including aspects relating to each of the three mandatory components. This document will also provide additional information relating to waivers from particular requirements or guidance promoting good practice, particularly relating to pupillage and other forms of work-based learning.
72. Figure 3 below sets out the relationship between the high-level Handbook rules and the three supporting documents.

Figure 3: the proposed rules framework for education and training



The Authorisation Framework

73. All organisations that offer the vocational and/or pupillage or work-based learning components of the training (including where combined with another component such as the academic component) will be subject to the Authorisation Framework.
74. The Authorisation Framework will be used by the BSB to set out all mandatory requirements for an organisation to become an AETO, including adherence to the four FBT principles identified in the 2016 consultation:
 - encouraging greater flexibility – so that the training system enables innovation in how education and training is delivered;
 - improving accessibility – so that the best candidates can train as barristers and that the Bar better reflects the communities it serves;
 - improving affordability – to bring down the cost of studying to students; and
 - maintaining high standards – to ensure that any new training pathway sustains current standards.
75. Both the vocational component and the pupillage component of all new pathways will have to adhere to the new curriculum and assessment strategy and any additional guidance (published by the BSB as part of the Bar Training Handbook).
76. The Authorisation Framework will also help the BSB to assess training programmes/courses against the above criteria, setting out the requirements for each mandatory component of training in order to meet the requirements of the Professional Statement and be eligible to practise as a barrister.

77. The BSB will provide support and guidance to help make the application and authorisation process as transparent and manageable as possible, and detailed mandatory criteria for the relevant training component will be made clear in any authorisation by the BSB.
78. Once authorised, AETOs would be expected to follow any requirements set out in supporting documents and be subject to ongoing supervision by the BSB.

The Memorandum of Understanding with the Inns

79. The MoU will set out the mutual obligations between the BSB, COIC and each of the four Inns, in relation to the education and training of barristers.
80. It will address student membership of an Inn, student conduct, fit and proper person checks and qualifying sessions. It will also describe how the Inn's activities will be planned and monitored in accordance with the four principles of our FBT reforms and the principles of good regulatory practice: transparency, accountability, proportionality, consistency and targeting. It will also set out the arrangement for the BSB to audit and supervise the Inns' activities; this will ensure that the BSB, COIC and the Inns have clearly articulated obligations relating to students and appropriate mechanisms in place.

The Bar Training Handbook

81. Further information and guidance on our training arrangements may be provided by the BSB to supplement the mandatory elements of the Authorisation Framework, the MoU and to provide clarity for students. The Authorisation Framework will refer to these additional publications and the authorisation of AETOs will be subject to compliance with any requirements. This will include, for example, any detailed requirements in relation to the delivery of pupillage (more information on which is included at paragraphs 96-100 below). There will also be additional information provided as good practice guidance for AETOs (for example, in relation to pupillage recruitment, funding awards etc).

How do the new rules achieve this?

Routes to qualification (rules Q3 to Q28)

82. The rules set out at a high level the components of training required to be:
 - Called to the Bar;
 - issued with a provisional practising certificate (to undertake the practising period of pupillage); and
 - issued with a full practising certificate as an authorised person.
83. Further details of how this is to be achieved will be provided in the Authorisation Framework and in authorisation agreements with AETOs. For example, the mandatory components of training in each authorised pathway are described, as are the

requirements for beginning each component of training. Further requirements on AETOs may be imposed as part of their authorisation agreement with the BSB.

The role of the Inns of Court

84. The new rules framework sets out, at a high level, the continuing role of the Inns of Court in the education and training of prospective barristers. In addition to calling individuals to the Bar there continues to be a requirement to undertake qualifying sessions with an Inn (rule Q3.3). Rule Q6 provides for the BSB to set out in writing:
 - requirements to be met by the Inns when admitting student members and calling individuals to the Bar;
 - the manner in which an Inn should assess whether someone is fit and proper to be called; and
 - the minimum requirements for delivering qualifying sessions.
85. There will no longer be a need for the Inns of Court to approve or accredit pupil supervisors. This will be for AETOs to determine and provide assurances to the BSB as to a pupil supervisor's competence and suitability.
86. The MoU will set out the detail to give effect to the rules in this area, in particular that:
 - students continue to be required to be a member of an Inn;
 - student conduct is overseen in partnership between the BSB and the Inns of Court, with strengthened quality assurance/compliance arrangements in place;
 - the Inns of Court will continue to administer the "Fit and Proper Person" test and as part of this a 'Standard' Disclosure and Barring Service check will be made prior to Call; and
 - students will still be required to complete a series of professional development activities provided by their Inn ("Qualifying Sessions"), prior to Call. In future, students will be required to complete 10 qualifying sessions, which must be broadly aligned to the Professional Statement and other professional standards agreed by the BSB, linked to practice at the Bar and the wider justice system.

Authorised Education and Training Organisations (rules Q29 to Q34)

87. The rules set a framework to enable the BSB to approve organisations as an AETO. In order to decide whether they are appropriate, the BSB will refer to the Authorisation Framework, which sets a number of mandatory and recommended criteria. The BSB will need to be satisfied that a potential AETO meets the mandatory criteria and is overall a suitable provider of training.
88. The BSB will be able to attach conditions to an authorisation and will also be able to vary, amend, suspend or withdraw authorisation for the reasons set out in rule Q33. These rules will be supported by our risk-based supervision of AETOs to ensure we can satisfy ourselves in a proportionate way that training is being delivered effectively.

89. The BSB's relationship with AETOs will be vital to ensuring the quality of training at the Bar and the authorisation process, agreements with AETOs and supporting guidance (as part of the Bar Training Handbook) on delivery of training will give effect to the Board's decisions that would previously have been included in rules, some of which are summarised below for illustrative purposes.

Reviews and appeals (rules Q35 to Q40)

90. The new rules framework provides for applicants to review or appeal decisions, where provided for in Part 4.

Exemptions and transferring lawyers

91. The rules include a general power for the BSB to waive training requirements where appropriate (in common with our current rules and other parts of the Handbook). The rules also retain existing arrangements for transferring lawyers. For that reason, we have left these rules largely unchanged⁸ but we will review them in due course (this will in part be necessary as the arrangements for the UK's departure from the European Union become clear, given the dependencies on EU legislation).

Enabling the new rules framework for Bar training

92. We describe above how the different elements of the framework sit together and the rationale for not including all requirements in the rules. This section summarises some of the key components that will also be part of the new framework to give an overview of how it will work in practice.
93. The new regulatory framework must enable AETOs to deliver education and training as one (or part) of the example pathways set out in the Authorisation Framework. Each pathway must accord with the following aspects of the BSB's policy decision of March 2017. The Authorisation Framework will specify that:
- there be an academic, vocational, and pupillage or work-based learning component of the training;
 - the Bar should remain a graduate profession normally requiring achievement of at least a 2:2 degree classification;
 - the academic component should incorporate the seven foundations of legal knowledge subjects which currently make up a qualifying law degree; and
 - passing the Bar Course Aptitude Test should remain a requirement prior to the vocational component.

⁸ Except for the removal of the automatic exemption from funding requirements for transferring lawyers.

Academic legal training component

94. In our March 2017 policy statement, we stated that we would no longer regulate academic legal training and the requirements of the qualifying law degree will cease when these new rules take effect. Although we will not regulate the academic legal training component, we have said that the seven subjects known as the “foundations of legal knowledge” will remain necessary and this is reflected in the draft rules.

Vocational training component

95. The mandatory training requirements for the vocational component are specified within the Authorisation Framework. As the requirement for qualifying sessions remains, these must be completed before concluding the vocational component. The BSB will specify minimum requirements in a written statement under rule Q6 and the oversight of these will be dealt with in the MoU.

Pupillage and other forms of work-based learning component

96. The arrangements will ensure that AETOs providing pupillage do so according to the requirements set out by the Board in May 2018. The following will not be specified in rules, but through a Bar Training Handbook provided by the BSB.
97. Regarding the duration of pupillage, and the elements of it:
- the presumed duration of pupillage will be a minimum of 12 months and no more than 24 months (or proportionately longer if undertaken part time):
 - each AETO will determine the duration of the programme it offers; and
 - when seeking authorisation AETOs will be required to demonstrate why the duration of the pupillage they offer is appropriate if it varies from the presumption of 12 months.
 - the length of the non-practising period of pupillage will normally be six months for full-time 12-month pupillage, after which a provisional practising certificate (PPC) may be applied for:
 - AETOs may apply for a variation to this, as part of the authorisation process, if it varies from the presumption of six months.
98. Minimum pupillage funding award⁹:
- the minimum pupillage funding award will be set by the BSB with reference to the wages recommended by the Living Wage Foundation, and will increase annually in line with that figure:
 - AETOs must make monthly payments to pupils, subject to where other flexible payment arrangements are permitted (such as upfront payments); and

⁹ The rules relating to pupillage funding are currently set out in Part 2 of the Handbook. We propose to remove these and deal with funding arrangements via the Bar Training Handbook and agreements with AETOs. This will be explored further in our forthcoming recruitment and advertising consultation.

- in order to meet the minimum award requirements during the practising period, AETOs will continue to cover the difference between a pupil's earnings and the minimum award.
- there will be no automatic exemption from the pupillage funding for transferring lawyers.

99. Supervision of pupils:

- the number of pupils allowed to be supervised per pupil supervisor at any one time will be as follows:
 - for the self-employed Bar, pupil supervisors will be limited to two pupils – no more than one non-practising pupil and one practising pupil; and
 - for the employed Bar, pupil supervisors will be allowed to supervise more than one pupil at a time, and it will be up to each AETO to propose the organisational structure of pupil supervision as part of its authorisation.
- in relation to pupil supervisor training:
 - the BSB will prescribe outcomes for pupil supervisor training;
 - supervisor training will continue to be open to providers other than the Inns;
 - the BSB will seek assurance from AETOs that pupil supervisors have met the required training outcomes; and
 - refresher training will be mandatory for all pupil supervisors, and will be required every five years, or after three years for someone who has not supervised any pupils in the intervening time.

100. The pupillage advertising requirements will not be changing. These rules, however, have been removed as they can best be captured alongside the above requirements in the Bar Training Handbook.

Continuing Professional Development rules and other consequential amendments

101. The Continuing Professional Development (CPD) rules were introduced in January 2017. This section of the Part 4 rules will remain unchanged, save for numbering and minor wording amendments to take account of terminology and language used in the new Part 4 Qualification rules.

102. Other minor and consequential amendments to the BSB Handbook are set out at annex 2 to take account of the changes discussed in this document.

How will the new education and training system benefit various groups?

103. The current training system is overly prescribed and inflexible. Invariably, students train on the single track to qualify which is not outcomes-focused and does not always encourage students from diverse backgrounds to train and qualify as barristers.

104. Our risk and evidence-based approach to regulation means that we must focus more clearly on the competences that barristers are expected to achieve at the point we authorise them to practise. To do this we introduced the Professional Statement for barristers in 2015 and included the threshold standards in 2016.
105. In order to truly see changes to the way education and training is set up and delivered, we also need a new regulatory approach which is more permissive about the specific nature of the training, allowing a variety of models to be put forward by training providers, as long as they can be shown to meet the required outcomes.
106. Moreover, to enable this new outcomes-focused approach, we are seeking to build a new training system which is aimed at the competences of the Professional Statement and rooted in the four principles of the FBT programme (flexibility, accessibility, affordability and high standards.) By specifically building the new training system around these core principles, we anticipate that the new system will benefit students, education and training organisations and the wider justice system.

For the public, we aim to:

- Increase public confidence with knowledge that all authorised barristers will have successfully met the requirements of the Professional Statement before being authorised to practise;
- Increase public trust because all barristers will be required to have a 'Standard' Disclosure and Barring Service (DBS) check undertaken prior to being Called to the Bar.

For Students, we aim to:

- **encourage greater flexibility** with a wider choice of education and training courses to qualify with knowledge that any approved "pathway" will prepare them to deliver legal services in an ever-changing environment;
- **improve accessibility** so that the best candidates can train as barristers and that the Bar better reflects the communities it serves by removing barriers to entry for those who are currently under-represented within the Bar;
- **improve affordability** to bring down the cost of studying to students and improving value for money with greater information being made available to students; and
- **maintain high standards** to ensure that any new training pathway enables them to demonstrate the requirements of the Professional Statement at the end of their training.

For AETOs, we aim to:

- **encourage greater flexibility** so that education and training organisations are freed from previously prescriptive regulation to deliver training programmes in different and innovative ways;
- **improve accessibility** to empower education and training organisations to better understand student needs and offer services accordingly;

- **improve affordability** by reducing prescription in our rules, we will allow education and training organisations to develop cost-effective and value-added programmes; and
- **maintain high standards** by ensuring all education and training organisations have an understanding of the requirements for authorisation.

Section B – What do the current Qualification Rules say?

107. The Part 4 Qualification Rules can be found on the BSB [website](#). Apart from Section C (CPD Rules), the Qualification Rules are the last major part of the Handbook to be reviewed since the Handbook was developed. In reviewing the current rules, we have sought to include rules according to the framework (as described above) without the need for being too prescriptive.
108. For the most part, Section B of the Part 4 Qualification Rules apply to persons who wish to be called to the Bar and to become qualified to practise as a barrister. There are also specific rules for pupil supervisors, and approved training organisations. Other roles are specified for the Inns of Court and the Inns Conduct Committee.
109. The destination table, attached as annex 3, shows how the new rules framework will replace the current rules.

Section C – How do the changes relate to the Regulatory Objectives?

110. This section sets out the impact of the proposed changes on each of the Regulatory Objectives, as set out in section one of the Legal Services Act (“LSA”).

Protecting and promoting the public interest

111. Barristers’ clients rely on their trustworthy advice and complete integrity. The standards expected of the profession depend upon a high level of intellectual ability, a firm foundation of knowledge and skills, and the confidence to use those in challenging circumstances. How people become barristers is important to society as a whole, as well as to individuals who might be relying on their services or thinking of becoming a barrister.
112. Our proposals aim to assure competence by setting standards for ‘day one’ of practice. To do this, the education and training must be focused on meeting the requirements of the Professional Statement.
113. It is also important that a barrister be a fit and proper person to enter a profession, which is so important for maintaining confidence in the justice system. Our new arrangements with the Inns of Court will assure the public that all newly qualified barristers undertake a declaration, before being called to the Bar, which is strengthened by a ‘standard’ DBS check. This will provide further assurances that qualified barristers are both suitable and competent to do so. We will also strengthen the regulatory oversight of the activities of the Inns of Court via a memorandum of understanding that clearly sets out roles and responsibilities. This will enable the BSB to set clear expectations of the Inns when making decisions about fitness and propriety and in relation to student conduct, with stronger audit and oversight arrangements. We therefore believe our proposals promote this regulatory objective.

Supporting the constitutional principle of the rule of law

114. Barristers are specialist legal professionals who have a particularly important role in upholding the rule of law and providing access to well-administered justice through our court system. As such, one must be competent to do so; the new training system places the requirements of the Professional Statement as a mandatory minimum threshold. As noted above, a barrister’s role in upholding the rule of law, their duty to the courts and maintaining independence was key factor in determining that there remains a need for qualifying sessions in the new curriculum. The guidance on qualifying sessions will include a theme covering legal knowledge, justice and the rule of law.
115. As part of the consultation process, we have listened to concerns that the teaching and assessment of ethics could be improved. We have, therefore, made proposals that the teaching of ethics be more pervasive and that, closer to the point of authorisation, there be a new assessment of a pupil’s ability to handle ethical problems. We think that this approach will enable students to better embed ethical learning and be better placed to demonstrate their competence. We, therefore, think that our proposals promote this regulatory objective.

Improving access to justice

116. Our proposals promote access to justice. We are committed to enabling more accessible, flexible and affordable “pathways” in which to qualify as a barrister, thereby increasing opportunities to qualify as a barrister, including those from under-represented demographics. By removing barriers we are encouraging the supply of barristers to meet the changing needs of legal services consumers, thereby improving access to justice.

Protecting and promoting the interest of consumers

117. Depending on what new “pathways” are proposed, we think that this approach will provide greater **accessibility**, **flexibility** and **affordability** in the provision of education and training which will enable prospective barristers to train in different ways. This, we think, will make the Bar a more open and welcoming profession for attracting the best and brightest candidates from some of the more under-represented demographics. Moreover, by using the professional statement to evaluate proposed training programmes for compliance with the principle of **high standards**, we can provide a greater degree of confidence to consumers of legal services that newly qualified barristers have met the minimum requirements. The interests of clients and the need to provide an adequate service are clearly stated in the Professional Statement. This will be accompanied by a strengthened regulatory relationship with AETOs to ensure the training is appropriately managed and delivered, which will lead to greater consistency of outcomes.
118. At a roundtable discussion with consumer representative bodies, hosted by the BSB, one representative body told us that creating more diversity within the Bar would help some clients to have a more positive experience of the profession (see below for more on how the application will promote diversity.) Another representative group said they saw the inclusion of skills relating to handling clients, inclusiveness and diversity in the Professional Statement as a positive step. Consultees also suggested that there should be opportunities for formal client-focused training (earlier in the training) which would help prospective barristers to develop the softer skills that are more difficult to hone without direct contact with clients. We think this type of training may be best provided in legal clinics or more pervasively through an apprenticeship-style pathway, both of which could be offered in compliance with the Authorisation Framework.
119. In response to the draft Qualification Rules, the Legal Services Consumer Panel drew attention to regulatory oversight of students, raising concern with the policy decision to have a continued role for the Inns in administering the fit and proper person checks (and by extension student conduct.) When discussing proposals relating to the role of the Inns, the Board considered the possibility of the BSB taking on functions which are presently fulfilled by the Inns, including the administration of the fit and proper person test. The Board reasoned that, subject to greater oversight from the BSB, it was more proportionate to continue to delegate this function to the Inns as it is closely linked to their statutory role in Calling students to the Bar. The Inns also have established relationships with students and are able to observe their behaviour over a period of time whilst they are student members. It would not be appropriate for the BSB to take on that pastoral role and it would be a significant undertaking for the BSB to put processes in place to vet every student. However, the new oversight arrangements will

give the BSB the opportunity to have greater confidence in the Inns' processes to ensure that only suitable people are being called.

Promoting competition in the provision of legal services

120. We are a niche regulator focused on advocacy and specialist advice; this means that in order to ensure a minimum level of competence, we set standards, through the Professional Statement, to be met at the point of authorisation and seek to reduce unnecessary barriers to entry.
121. Moreover, our proposals to offer more accessible, flexible and affordable pathways should enable a more diverse pool of candidates to qualify as a barrister, providing more choice for consumers and promote competition in the market.

Encouraging an independent, strong, diverse and effective legal profession

122. This objective underpins much of the FBT programme of reform: to encourage innovation in the design and delivery of all three components to improve accessibility, flexibility, affordability whilst maintaining the high standards expected of qualified barristers.
123. Whilst the Professional Statement clarifies the competences that must be achieved, it is the Authorisation Framework that sets the parameters, for AETOs, to deliver against the four FBT principles.

Accessibility

124. Our trends data (see annex 4) shows that over the last six years, there has been a sustained improvement for women entering the profession but those with BAME backgrounds, progress is still slow. Last year, we published two research reports, Barriers to Bar Training (qualitative) and Differential Attainment (quantitative), both showing gaps in terms of those seeking to qualify as a barrister, the attainment on the vocation course (and in the centralised assessments in particular) and gaining pupillage.
125. Promoting diversity is a key objective of our reforms. In pursuit of this principle, we will work closely with AETOs to ensure that they:
 - provide wide and fair access to training pathways;
 - remove barriers to entry for those who are currently under-represented within the Bar (which will include guidance for chambers on good practice in pupillage recruitment);
 - support prospective barristers to complete their education and training and to achieve the best outcome that they are capable of; and
 - support prospective barristers to progress into the profession, the workplace or further study.¹⁰

¹⁰ BSB Authorisation Framework, 2018.

Flexibility

126. We interpret flexibility in line with the LSB's statutory guidance which states: *Providers of education and training have the flexibility to determine how to deliver training, education and experience which meets the outcomes required*.¹¹
127. Flexibility for prospective barristers means flexible education and training, i.e. "*Flexible learning is about offering students choice in how, what, when and where they learn; the pace, place and mode of delivery*".¹² Flexibility, for AETOs, means that the BSB will encourage "...*innovation in how education and training is delivered*".¹³ and wants to support the opening up of new pathways to qualification that provide prospective barristers with more choice about modes, location, timing, and sequencing of study.¹⁴

Affordability

128. For many, the cost of Bar training can act as a significant barrier preventing them from attempting to enter the profession. This has consequences in terms of the socio-economic diversity of those entering the profession. Among other challenges, raised elsewhere, our research on Barriers to Training for the Bar, noted "financial considerations particularly affected those from lower socio-economic groups, and information gaps were an issue for those from BAME and lower socio-economic backgrounds who lacked personal networks and connections to the profession."¹⁵
129. For our purposes, affordability is a broader concept than simply reducing the cost of training. Affordability needs to be understood in the context of de-risking the prospective barrister's investment in Bar training. This encompasses not only the prospective barrister's prospects of qualifying successfully at the Bar, but also the provision of transferable knowledge, skills and attributes for those who do not complete their Bar training or do not enter practice so that they can secure alternative professional careers.
130. Affordability is, therefore, improved by re-balancing and improving the risk/benefit ratio for prospective barristers. Risks include financial cost, time, lost opportunity and an individual's reputation in the event of not completing their education and training for the Bar. We aim to aide this by:
- reducing the financial cost of Bar training where consistent with maintaining standards;
 - providing value for money, ie "*the most advantageous combination of cost, quality and sustainability to meet customer requirements*";¹⁶

¹¹ Outcome 2 of the Legal Services Board: Guidance on regulatory arrangements for education and training (March 2014)

¹² Higher Education Academy <https://www.heacademy.ac.uk/individuals/student-success/toolkits/flexible-learning>, accessed 05/06/17. Note that the BSB lays down a curriculum and assessment strategy which must be complied with.

¹³ BSB Policy Statement on Bar Training 23/03/17

¹⁴ BSB Authorisation Framework, 2018.

¹⁵ NatCen Barriers to training for the Bar

¹⁶ finance-ni.gov.uk/articles/definition-best-value-money, accessed 05/06/17

- enhancing benefits, eg incorporating recognised academic awards such as masters degrees and/or professional qualifications;
 - increasing the explicit transferability of skills that may be recognised within and outside the legal profession;
 - providing clear and accessible information so that prospective barristers understand the risks and benefits of Bar training as they apply to their own personal circumstances.
131. We will also look at how financial support is offered to those who need it. In addition to loans, there are other types of financial support, including (though not limited to):¹⁷
- scholarships and bursaries – financial awards paid by HEIs, charities, Inns of Court, professional bodies and others to prospective barristers who meet certain criteria;
 - fee waivers – a reduction in fees, subscriptions and other charges; and
 - “in-kind support” – eg credit that prospective barristers can spend on in-campus facilities, provision of court dress and/or accommodation.¹⁸
132. In addition to the above, there will be qualifying sessions covering topics related to equality, diversity and inclusion. It is intended that these sessions help students gain the appropriate understanding required by the Professional Statement.
133. It is difficult to predict with certainty whether or not the reforms will necessarily improve access to the profession from BAME and lower socio-economic status groups. However, we can expect that by improving the flexibility and range of options to accommodate more students, there is further potential to enable innovation and improvement in this area.

Conclusions

134. Taken as a suite of changes, our reforms provide the potential to increase access to the profession, whether on grounds of cost, location or mode of delivery. Having the flexibility of option “pathways” could also accommodate students with varying learning styles. As part of our evaluation activities (discussed below) we will monitor the impact of our reforms over time.

Increasing public understanding of the citizen’s legal rights and duties

135. Our reforms do not specifically address this objective. However, there is the potential for more flexible pathways to be authorised which could increase the prospective barristers’ opportunities to gain experience working with clients in law centres or legal clinics. This may indirectly promote public understanding of legal rights and duties, otherwise the proposals are broadly neutral in relation to this objective.

¹⁷ <https://www.officeforstudents.org.uk/for-students/student-funding-finance-and-value-for-money/>

¹⁸ BSB Authorisation Framework, 2018.

Promoting and maintaining adherence (by authorised persons) to the professional principles

136. As stated above, the new training system seeks to better embed the identification (and response to) ethical questions, by ensuring that the teaching of ethics is pervasive in the new curriculum with a revised assessment in a more contextualised setting and during the work-based learning component of training. These changes should better equip barristers to deal with ethical questions and give them the confidence to understand and apply duties under the BSB Handbook.
137. Additionally, the retention of mandatory qualifying sessions, means that there is an opportunity for students learn from experienced practitioners in approaching ethical questions in practice. It is anticipated that students will undertake qualifying sessions in relation to ethics, standards and values.

Section D – How do the proposed changes relate to the Better Regulation Principles?

138. This section sets out how we have considered our obligation to have regard to the Better Regulation Principles in our proposed reforms.

Proportionality

139. Proportionality has been a key consideration in these reforms. In particular, our reforms to encourage flexibility and innovation stem from the need to effectively integrate the Professional Statement into training programmes and address issues of access to the profession, with prescription only where we believe it continues to be necessary.

140. Additionally, where we considered proposals relating to functions carried out by the Inns of Court, we considered the proportionality of the BSB taking on several of the functions including the fit and proper person checks, the administration of student conduct and carrying out DBS checks for candidates for Call to the Bar.

Accountability

141. The BSB continues to be accountable for setting the appropriate standards at the point of both Call to the Bar and Authorisation. The reforms are specifically designed for AETOs use of the Authorisation Framework and Professional Statement to develop and deliver education and training that meets the expected outcomes. There will be an ongoing regime of audit and supervision to ensure education and training programmes are meeting standards set.

142. We will be undertaking a robust programme of evaluation and evidence gathering to monitor progress against intended outcomes.

Consistency

143. The new training system should enable education and training outcomes to be achieved on a consistent basis. The retention of centralised assessments provides an additional assurance of standards being met by all qualified barristers, regardless of the pathway chosen.

Transparency

144. Through the Professional Statement, the BSB is able to set transparent requirements of all prospective barristers. The development of the Authorisation Framework, the MoU with the Inns of Court and the Bar Training Handbook provide the necessary requirements for those seeking to become Authorised Education and training Organisations as well as the requirements for training programmes and support for prospective barristers.

Targeting

145. Our programme of reform seeks to address only those aspects of the training which require the greatest intervention. By focusing on the outcome of the training process and allowing education and training providers to design and deliver training programmes, we limit arbitrary or unnecessary barriers to training.

Section E – How we will evaluate the success of the reforms

146. An external supplier, Alpha Plus, has been contracted by the BSB to deliver an independent evaluation of the FBT programme that will address the following objectives:
- Examine how the FBT education and training reforms are implemented and delivered in the first few years following the rules change, so that we understand how they contribute to the overall programme impacts; and
 - Assess whether the FBT programme has met its objectives and consider the nature and scale of its impacts in accordance with its four principles.
147. There will be an initial planning stage (stage1) focused on gaining a full understanding of the context and planned intentions of the FBP programme, and designing the later measures for the impact evaluation, including any additional data that will need to be collected over the implementation of the programme (stage 2).
148. The process evaluation (stage 3) will focus on the planning, set-up, early implementation and delivery of the education and training reforms, examining what is being delivered and how it is being delivered, identifying perceived benefits, barriers and any unintended consequences along with preliminary outcomes. The process evaluation will start as the reforms begin to come into place and is currently scheduled to start in 2020.
149. The impact evaluation (stage 4) will address the overall impact of the FBT reforms, over a defined period, in terms of meeting the four key objectives laid out by the BSB – encouraging flexibility, improving accessibility, improving affordability, and sustaining standards. This will involve a range of indicators and analytical approaches developed and set out in the planning stage. This stage of the evaluation is currently planned to start in 2024, to give the reforms time to start to have an impact and is likely to run for several years.

Figure 4: Indicative timeline for stages 1 and 2

Stage	Activity	Outcome	Completion date
Stage 1	Project initiation meeting		29/10/2018
	Research & statistics, consultation and policy documents received	Documents on SharePoint	5/11/2018
	Development of initiation document	A+ sign-off initiation document	7/11/2018
	BSB sign-off initiation document	Stage 1 planning complete and agreed by client	12/11/2018
	Identify key criteria/aims for document review phase	Review documentation developed	9/11/2018
	Manage BSB documents for review	Master review spreadsheet developed and maintained	9/11/2018
	Review documents	Key themes and stakeholders developed	30/11/2018
	Identify clarification questions and stakeholders for interview	Interview schedule and protocol developed if required.	19/11/2018

Stage	Activity	Outcome	Completion date
		Stakeholder email/ invitation to take part in an interview developed	
	Stakeholder interviews for clarification as required	Clarification data collected	30/11/2018
	Draft theory of change developed	Draft theory of change	5//12/2018
	Planning for theory of change workshop	PPT slides, agenda and resources developed	7/12/2018
	Facilitate theory of change workshop	Theory of change workshop	10/12/2018
	Develop final theory of change	Final theory of change	14/12/2018
	Review of existing data	Overview of existing data	14/12/2018
Stage 2	Development of logic model	Logic model and evaluation questions	31/01/2019
	Process evaluation plan	High-level process evaluation plan developed (research instruments included in Stage 3)	22/02/2019
	Statistical analysis planning	Statistical analysis plan (SAP) + draft evaluation documents	29/03/2019
	Evaluation design developed	High-level process evaluation plan and SAP included in single evaluation design document (Stage 3 process evaluation research instruments developed in Stage 3)	29/03/2019
	Ethics review	Ethics recommendations document	29/03/2019
	Client updates	Fortnightly email updates	ongoing

Section F – How have we consulted on the proposed changes?

150. Since 2014, we have sought to be open and transparent at every stage of the process. In this time, we have sought to raise awareness of the relevant consultations (see full FBT timeline in Section A) and actively to seek responses from all stakeholders, including members of the profession, representative bodies and specialist bar associations, students, providers of education and training and from consumer advocacy groups.
151. In this section, we highlight issues raised by respondents to our rule change consultation and how we have responded.

Consultation on the new Qualification Rules (2018)

152. In July 2018 we launched a consultation on a set of draft rules to implement the policy decisions the Board has taken between 2016 and 2018. The consultation lasted two months and 6 responses were received. The consultation asked two questions:

Question 1: Do you think that the proposed rules provide the necessary regulatory framework to give effect to the new Bar Training scheme? Please explain your views.

Question 2: Is the drafting of the proposed rules sufficiently clear and precise? Please explain your view.

153. The BSB Education and training Committee carefully considered all responses on behalf of the Board, which subsequently endorsed the Committee's recommendations. The responses raised both policy issues and drafting suggestions. The proposed rules include amendments agreed following the Committee's discussions. The Committee accepted a number of minor drafting suggestions also highlighted by respondents.

General comments

What respondents said

154. The Council of the Inns of Court made several general comments relating to the new rules framework, including that:

[T]he Inns' overriding comment is that there is insufficient emphasis in the draft rules on the crucial role played by the Inns in relation to Qualifying Sessions, Call to the Bar (which is reserved to the Inns by the Legal Services Act 2007), conduct or the mandatory training after Call comprised in the pupils and new practitioners' courses.

Committee response

155. The Committee noted that such matters have been discussed at length with COIC as we have developed an MoU, which will clearly set out the responsibilities of COIC within the BSB's regulatory arrangements. The role of the Inns in call is captured in the rules and the Committee continues to believe that the rules appropriately capture the high-level framework, whilst leaving more detailed requirements to a separate document. We expect to have agreed the MoU with the Inns by early 2019 and will be shared with the LSB to inform its rule change decision.

Rules relating to pupil supervisors

156. The current Part 4 rules specified all arrangements relating to pupil supervisors, including, among other things, who is eligible, how to apply and what type of person can be a referee for an applicant.

What respondents said

157. COIC's response to the consultation suggested that Part 4 of the Handbook should continue to include rules setting out the manner in which pupil supervisors should be appointed and the duties of pupil supervisors. They suggested that pupil supervisors should therefore be mentioned in the rules at rQ1 and rQ29-34.

Committee discussion

158. The Committee considered several options for dealing with this issue, alongside a submission from COIC outlining their view of the risks associated with not mandating a separate accreditation process by the Inns.
159. The Committee did not agree that the title or functions of 'pupil supervisor' needed to be set out in Handbook rules. The Authorisation Framework will require the AETO to put forward an appropriate training programme to deliver the relevant requirements, which will include having adequately trained and competent supervisors. The new rules give us a strengthened regulatory relationship with the AETO to ensure the training is appropriately managed and delivered. All detailed aspects relating to pupillage, including the new flexibility that is to be introduced, will be delivered through a Bar Training Handbook, with which AETOs will be expected to comply.

Other miscellaneous issues

AETO accreditation

160. COIC suggested that we should reverse the presumption of approval (i.e. that AETOs *should* be approved unless the BSB can find a good reason not to.) The Committee was strongly of the view that it should be the responsibility of the AETO to satisfy the BSB that it is suitable, otherwise there was a risk of sub-standard providers being approved by default, which was not in the public interest.

Policy issues raised

161. A number of policy issues were raised, which were considered by the Committee despite being outside the scope of the consultation. The Bar Council¹⁹ suggested that the BSB should not adopt flexibility in the one-to-one relationship between pupils and their supervisors. Additionally, the Legal Services Consumer Panel drew attention to the matter of regulatory oversight of students, raising concern with the policy decision to have a continued role for the Inns in administering the fit and proper person checks (and by extension student conduct.) The Committee noted that the arguments in relation to pupil supervisors and the role of the Inns had been discussed at length by the Board previously and the responses to this consultation put forward no new evidence that would justify changing policy agreed by the Board less than six months ago.

¹⁹ This position was also supported by BACFI.

162. The Bar Council also raised concerns with the scope for exemptions from training requirements, including those available to transferring solicitors and legal academics. The Committee noted that there has been no substantive change to these arrangements – there is no evidence of problems with the current rules and the future arrangements will be focused on ensuring the same high standards are met by all who transfer, as set out in the Professional Statement.

163. We are planning further engagement activities this autumn to highlight the proposed changes, particularly as it relates to the greater flexibility for training providers of the work-based learning component.

Section G – How will the proposed changes affect other Approved Regulators?

164. Whilst recognising the unique needs of students and stakeholders of the Bar, we have engaged positively, and to good effect, with the Solicitors Regulation Authority (SRA) throughout the development of our proposals. The Professional Statement for Barristers and the Statement of Solicitor Competence contain a number of common requirements. This has helped us to complete a mapping exercise (see Annex 5) to illustrate the similarities and differences. This has been critical in helping to understand the level of mutual recognition involved, once both new systems come into force.
165. We will, of course, continue to work closely with other approved regulators in relation to settling the following areas:
- Transferring lawyers who are already qualified under another regulator;
 - Candidates who are part-qualified on a pathway approved by another regulator; and
 - The transition of the ‘academic stage’ of training which is jointly owned by the BSB and SRA.

Qualified lawyers

166. Under the new system, those qualified lawyers seeking to transfer to the Bar will need to demonstrate equivalence to the Professional Statement. We will continue to operate a Bar Transfer Test scheme for those transferring from another regulator or those who may be part-qualified under another approved regulator. For those already qualified under another regulator, the new system should make it easier for such transfers.
167. Currently, barristers have to take the whole of the QLTS. Under the new system, they will only need to take the parts of the SQE which are not covered in the vocational component of training. We have also confirmed that vocational component providers may, should they choose to, offer optional modules which would help Bar students to successfully pass either SQE1 or SQE2, should they choose to sit them.

Part-qualified candidates

168. Subject to further detail from the SRA in due course, we intend to allow some equivalence to part-qualified solicitors. For example, we expect that passing the SQE stage one²⁰ should be sufficient as an equivalence to the academic component of training. This, we think, should aid students in deciding what law programme to attend, meaning that they could postpone decisions as to their eventual career intentions.

The ‘academic stage’ of training

169. The academic stage of training is currently regulated through the Joint Statement (1999) issued by the SRA and the BSB. The requirements for the academic stage of training are set out in the Joint Academic Stage Handbook. We are jointly responsible

²⁰ The SRA’s SQE stage one assessments include the subjects which are currently included in the seven foundations of legal knowledge

for the approval and monitoring of academic stage courses with the SRA, which undertakes this activity on behalf of both regulators.

170. In our 2016 consultation, we suggested that we do not see a need to continue to prescribe academic legal learning with the degree of detail currently found in the Joint Statement requirements. However, our policy statement in March 2017 made it clear that those seeking to offer training which involved the academic legal knowledge component must cover the seven foundation subjects. Students who seek to train for the Bar by studying on a vocational component course, authorised by the BSB, will need to have completed an equivalent academic component course which covers the same subjects.
171. Since this time, we have agreed a [Common Protocol](#) with the SRA as to the transitional arrangements required for students currently studying law on QLD/CPE courses as well as those who will start a course before new programmes are offered. For universities, this means that the SRA will continue to approve, and quality assure, providers of the academic stage of training until the last year that a candidate completes a qualifying law degree in order to qualify as a barrister.
172. Subject to approval, we will no longer recognise qualifying law degrees from the date our new rules changes take effect. This means that the BSB and the SRA will continue to jointly approve, and quality assure any QLDs and CPEs which start in or before academic year 2018/2019 until those courses are completed by the students.
173. From academic year 2019/20, the BSB will reduce its regulatory involvement to a minimum but any old-style QLD will still meet the BSB's new requirements. Only the SRA will require students starting a QLD or CPE in academic year 2019/2020 to meet the requirements of the Joint Statement. Furthermore, our understanding is that the SQE will now not be introduced until 2020/21, meaning that old style QLDs may be offered until this time. We also acknowledge that the SQE and the documentation to support its introduction have not been finalised or fully approved by the LSB.

Section H – How are we implementing the proposed changes?

174. As with other aspects of the FBT Programme, formal programme management arrangements will remain in place to provide the Board with further assurances as to the implementation and evaluation stages. We are happy to share further information with the LSB.
175. Assuming providers come forward with satisfactory proposals, we expect that students *may* begin training under the new system from the academic year 2019-20. We recognise that significantly new programmes are unlikely to start before 2020-21 because of the lead times on course approval and advertising for higher education institutions and we will, of course, continue to help any provider enter the market as quickly as is appropriate.
176. We have been working with education and training providers to ensure that transitional arrangements for current students are made. For example, students already undertaking education and training under the old rules will not normally need to switch courses (subject to certain time limits). Law programmes, the BPTC and pupillages will continue to be provided and no student will be disproportionately adversely affected by the changes.
177. Subject to approval of the new rules, we anticipate that we will begin to assess new courses immediately. As such, we are preparing to launch the Authorisation Framework, supported by an authorisation process designed to accommodate paper-based applications in the first instance (from February 2019) and later as an IT supported platform (from April 2019). The table below highlights key dates in implementing the changes. We will be happy to provide further information on our implementation plans.

Figure 4: Indicative timeline for implementing the changes

Implementing the Authorisation Framework	Delivery date
Design authorisation end-to-end process for AETOs (including risk-based approach)	November 18
Consultation on fees opens	December 18
Consultation on fees closes	February 19
Analyse consultation results	February 19
BSB Board meeting to approve fees	March 19
Authorisation Framework goes live	March 19
Supporting guidance and other documentation	March 19
Pilot scheme	April 19
Digital platform goes live	April 19
Internal audit of process	April 19