

**BAR
STANDARDS
BOARD**

REGULATING BARRISTERS

Application to the LSB for the approval of changes to the Bar Standard Board Handbook rules in respect of Continuing Professional Development requirements.

For approval by the Legal Services Board

10 October 2016

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This application is made in accordance with the requirements set out in the Legal Services Board's (LSB) Rules for Rule Change applications. The Bar Standards Board (BSB) wishes to provide the information below to support its application.

Any queries about this application should be made to:

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The Bar Standards Board (BSB) wishes to provide the information below in support of the application.

Summary

1. This application seeks the approval of the Legal Services Board (LSB) for changes to the Continuing Professional Development (CPD) rules, which are currently at rQ130-rQ137 of the 'BSB Handbook' (the Handbook), and consequential changes to the requirements that Established Practitioner Programme (EPP) barristers need to comply with in order to complete their CPD.
2. The proposed amendments to the CPD Regulations are found in Annex 1 of this document. Accompanying Guidance to the proposed changes are found in Annex 2. The guidance is intended to provide further explanation and clarity to the CPD rules that barristers should have regard to when completing their CPD rather than represent additional regulation.
3. The changes are designed to address shortcomings in the current CPD regulations by providing a CPD regime that is more focused on ensuring barristers complete structured, focused and relevant CPD. In addition the changes are more in line with the BSB's approach to risk-based outcomes focused regulation.
4. For clarity and in order to ensure that all the CPD rules are presented together in the Handbook, the proposed new rules are presented alongside the requirements for the New Practitioner Programme. The BSB is not proposing that the New Practitioner Programme rules and requirements are changed at this stage but we will be reviewing this position in the light of other work that falls within the FBT programme.

Background and rationale for the proposed new CPD scheme

5. In 2007 the Bar Standards Board committed to review all stages of education and training at the Bar. Over the last nine years as part of this commitment the BSB has reviewed the CPD requirements.
6. In 2013 LETR research was published. The 'LETR Literature Review Chapter 5: Continuing Professional Development (CPD)' highlighted a number of weaknesses with the legal professions' approach to CPD. This included:
 - A presumption that recording attendance of activities amounted to a record of learning was fundamentally flawed.
 - A diversity in practice meant a diversity of learning needs.
 - Professionals were best placed to set their own curriculum.
 - Encouraging and rewarding voluntary CPD activity over and above necessary existing levels of compulsion is the most effective means of propagating good practice.
 - An outcomes focused approach to learning was considered better than an input based approach.
7. In 2013 the Board, in light of the LETR research, approved a policy shift in CPD moving away from a prescribed number of hours of CPD to an outcomes focused approach. This approach focuses on the impact of a barrister's learning on their ability to provide a competent service.
8. The proposed approach is to:
 - Make practising barristers responsible for deciding the amount and type of CPD they should carry out.
 - Have the BSB regulate CPD with a risk based outcomes focused approach rather than a purely prescriptive approach.

9. This proposed new CPD regime is designed to address the LETR research findings.
10. The proposed new CPD regime is also consistent with the LSB's Guidance on regulatory arrangements for education and training issued under section 162 of the Legal Services Act 2007 and the outcomes it expects regulators to have in place with regard to its education and training requirements:
 - Outcome 1: Education and training requirements focus on what an individual must know, understand and be able to do at the point of authorisation.
 - Outcome 2: Providers of education and training have the flexibility to determine how to deliver training, education and experience which meets the outcomes required.
 - Outcome 3: Standards are set that find the right balance between what is required at the point of authorisation and what can be fulfilled through ongoing competency requirements.
 - Outcome 4: Regulators successfully balance obligations for education and training between the individual and the entity both at the point of entry and ongoing.
 - Outcome 5: Regulators place no inappropriate direct or indirect restrictions on the numbers entering the profession.

Methodology in the development of the new approach

11. As part of the process to formulate the detail of the proposed new approach to CPD, a number of assessments of the current CPD scheme have been made. These assessments have been made through review of applications of extension, waivers and one-off accreditation of CPD activities, queries received and through data captured by statistically significant spot checks of the profession.
12. A quantitative assessment of the administrative processes within the current CPD scheme indicated that:
 - The majority of applications for one-off accreditation were accepted. This demonstrated that some barristers were identifying relevant training but were being required to complete an administrative process for it to count towards their requirements. There is a fee associated with one-off accreditation. It is likely that this acts as a disincentive to complete worthwhile but non-BSB accredited training;
 - Barristers who completed all their CPD requirements in the last three months of the year were less likely to have a variety of CPD activities. They were more likely to complete all their CPD activities in one bloc e.g. Completing 12 hours of podcasts in a single sitting;
 - Barristers on average completed over 12 hours of CPD. This figure is 13 hours of CPD for the general profession excluding barristers in academia and 14 hours if barristers in academic institutions are included (barristers who lecture at Universities accrue very large amounts of CPD hours);
 - Compliance rates are above 90% for the profession.

13. A qualitative assessment of the current CPD scheme indicated that:

- There are activities under the current CPD scheme which are prohibited or restricted but were directly relevant to the good practice of a barrister. These included, practice management courses, general line management courses, reading. Legal writing and editing is permitted but is heavily restricted as to the amount of CPD hours that could be accrued;
- Members of the employed Bar were more likely to be assessed as non-compliant for failing to accrue enough accredited hours. However they had often completed at least the 12 hours of CPD required through in-house training;

14. An Equality Impact assessment of the current CPD scheme indicated that:

- Applications for waivers from the CPD requirements were more likely to be required by those barristers ceasing practice due to parental leave or illness;
- Applying for a waiver or extension of time due to parental leave disproportionately impacts on women at the Bar.

15. The BSB's conclusion was that the current EPP CPD scheme has a tendency to operate as a tick-box exercise, without a clear focus on maintaining professional standards. In particular we are concerned that barristers sometimes complete activities only to satisfy the required number of hours.

16. The current scheme also did not align with the LETR research that "encouraging and rewarding voluntary CPD activity, over and above any necessary and existing level of compulsion, is the most effective means of propagating good practice"¹

17. It is difficult under the current EPP regime for the BSB to assess that the CPD activities completed by barristers are relevant to their areas of practice and personal development.

Proposed new CPD Scheme

18. The new CPD scheme is laid out in the proposed new rules (Annex 1) and given detailed explanation in the Guidance in Annex 2. The Guidance aims to help barristers to complete their CPD requirements satisfactorily. The Guidance is provided in accordance with the Handbook provisions I6.4

I6.4

.a Guidance serves a number of purposes:

¹ Institute of Continuing Professional Development. (2006). Research Project. Regulating Competencies: Is CPD Working? London: CPD Institute. Page 4
Retrieved from http://www.cpdinstitute.org/storage/pdfs/CPD_research.pdf

.i to assist in the interpretation and application of the Core Duties or Rules to which such Guidance relates

.ii to provide examples of the types of conduct or behaviour that the Rules are intended to encourage or which would likely indicate compliance with the relevant Rule, or, conversely, which may constitute non-compliance with the Rule to which such Guidance relates.

.iii to explain how the Rule applies to a particular type of *BSB regulated person* and how that particular BSB regulated person could comply with the Rule.

.iv to act as a signpost to other rules or to guidance on the *Bar Standard's Board* website or elsewhere which may be relevant when considering the scope of the Rule.

.v in Part 3, to give further information about the process of applying for authorisation and about how the *Bar Standards Board* intend exercise its discretionary powers in relation to the authorisation of entities.

.b The Guidance set out in this Handbook is not the only guidance which is relevant to BSB regulated persons. In addition to the Guidance, the Bar Standards Board has published and will publish from time to time various guidance on its website which supplements this Handbook, including (but not limited to):

.i the Pupillage Handbook;

and

.ii the BSB's Supporting Information on the BSB Handbook Equality Rules

.c In carrying out their obligations or meeting the requirements of this Handbook, BSB regulated persons must have regard to any relevant guidance issued by the Bar Standards Board which will be taken into account by the Bar Standards Board if there is an alleged breach of or otherwise non-compliance with of the obligations imposed on a BSB regulated person under this Handbook. Failure to comply with the guidance will not of itself be proof of such breach or non-compliance but the BSB regulated person will need to be able to show how the obligation has been met notwithstanding the departure from the relevant guidance

19. In summary barristers are required to:

- Plan what their training requirements are for the year and set specific objectives;
- Complete an appropriate CPD activities relevant to their training requirements;
- Record the activities they have completed;
- Reflect on the activities they completed, with reference to whether they completed their objectives, whether the objectives were varied and what their training requirements for the future are; and
- Declare their compliance with their CPD requirements.

20. The new scheme places the responsibility on each individual barrister to determine the amount, type and nature of the CPD that they must carry out each year, with no minimum number of CPD hours required to be completed.

21. The proposed CPD scheme will involve barristers annually assessing the knowledge, skills and experience that they need as a barrister in order to continue to offer a proficient service to their clients and the public generally.
22. Barristers are required to specify their proposed types of activities they intend to complete. The relationship with the desired outcomes of CPD is that, without being prescriptive, it encourages barristers to consider different methods of training that may be appropriate to completing their various learning objectives. This provides some assurance that the CPD requirements are aligned with LETR Guidance, Outcome 3:

(b) Requirements beyond the minimum are only in place where they can be justified by the risks. We would expect regulators to review all available evidence to determine the likelihood of the risk occurring and to monitor the impact of any requirements over time. This may lead to an ongoing review cycle with strong links to regulatory supervision functions
23. Barristers will submit their Plans and Record Cards for assessment when requested as part of a spot check.
24. An assessment of CPD compliance will consist of assessing:
 - Whether the requirements in the rules have been met with regard to providing a written Plan, record of activities and reflection;
 - Whether the learning objectives set meet the definition with the rules;
 - Whether activities were in fact completed;
 - Whether the activities recorded meet the definition of CPD.
25. The BSB will take a risk based approach to assessing barristers. Where a barrister has attempted to have regard to the good practice examples provided in the guidance or has provided a suitable alternative this will be taken into account.
26. The BSB intends to spot check a statistically significant proportion of the profession in order to provide assurance about levels of compliance.
27. In addition High Risk barristers will also be required to submit their Plan and record card. For the purposes of non-compliance with CPD a High Risk barrister is defined as those barristers who had enforcement action taken against them in the previous three years or had been set Corrective Action for non-compliance with CPD requirements in the previous year. During the current schemes assessment of compliance there has been significantly higher rates of non-compliance with CPD from High Risk barristers than from the random statistically significant sample.
28. The new scheme directly aligns with the Outcomes expected by the LSB of regulators but in particular:

Outcome 1: Education and training requirements focus on what an individual must know, understand and be able to do at the point of authorisation

- (b). Regulators move away from 'time served' models that focus predominantly on inputs rather than outcomes as a default position

Outcome 3: Standards are set that find the right balance between what is required at the point of authorisation and what can be fulfilled through ongoing competency requirements

(b) Requirements beyond the minimum are only in place where they can be justified by the risks. We would expect regulators to review all available evidence to determine the likelihood of the risk occurring and to monitor the impact of any requirements over time. This may lead to an ongoing review cycle with strong links to regulatory supervision functions

(f). Continuing Professional Development (CPD) participants are required to plan, implement, evaluate and reflect annually on their training needs. A robust approach to monitoring is developed and aligned or integrated with existing supervision functions

Outcome 4: Regulators successfully balance obligations for education and training between the individual and the entity both at the point of entry and ongoing

(a). Regulators move towards obtaining assurance from entities that day - to-day competency requirements are being met. This means a shift away from low risk decisions (e.g. about staff secondments) being made by regulators themselves

Outcome 5: Regulators place no inappropriate direct or indirect restrictions on the numbers entering the profession

(c). Any education and training requirements are sufficiently flexible to meet the needs of a developing market, enabling businesses to make decisions about who they employ

Testing the proposed CPD changes

29. The operation of the proposed new CPD rules have been tested through a pilot process, public consultations and engagement with the profession.
30. The full pilot results report can be found here: [CPD Pilot Results April 2016](#)
31. The pilot took place between January 2015 and March 2016. The pilot involved the submission of a Plan, ongoing feedback to and from the participants, a series of structured surveys to participants through the CPD year and a final assessment of all CPD records in order to gather feedback and inform our refinement of the scheme.
32. The information we gathered from this pilot was used in conjunction with responses from the consultations on the new scheme in order to refine our approach and the associated rules, requirements and guidance for practitioners.
33. For the purposes of the pilot we assessed each stage of the new scheme separately in order to gather specific information. In the proposed operational scheme the CPD requirements will be assessed altogether at the end of the CPD year.
34. 76 barristers submitted planning statements. Of these 66 were considered fully compliant with the planning stage of the pilot.
35. The pilot participants completed an average of 28 CPD hours. This is more than double current requirements. However barrister participants recorded significantly higher levels of activities that would not currently be counted as CPD. Principally this includes reading and

over 4 hours on average of writing and editing. It also includes claiming more preparation time than would currently be calculated.

36. Calculating the hours completed from the perspective of what is permitted by the current CPD regime requirements, pilot participants completed an average of 10 CPD hours.
37. The most frequently undertaken activities were: seminars, conferences, mock trials listening to podcasts, self-study (reading of weekly updates, websites books, articles, case law) and practice management improvement (E&D development, financial and billing skills).
38. The scope and detail of the Plans submitted was very varied. Most barristers completed specific learning objectives with the majority of objectives being quite general in nature.
39. The Reflection stage was very encouraging and completed to a particularly high standard. Barristers explained in detail the choices they made and why, and where learning objectives weren't achieved what would be done to address this.
40. In a few instances where barristers have recorded very few hours, for example, it was demonstrated how these CPD activities met the learning objectives and were very relevant.
41. Assessment of the pilot participants has been time consuming as it has meant assessing more information and making comparative judgements of activities against learning objectives.
42. As a whole pilot respondents engaged with the process in the manner in which it is intended. The planning phase was completed, learning objectives were set, relevant CPD activities were completed and useful reflections were made. In this regard the first objective was met in that it demonstrated the new scheme can work in practice.
43. In particular barristers made use of the additional flexibility afforded to them by undertaking the new permitted types of CPD activities, but without reducing the number of hours undertaken. Indeed total hours spent on CPD activities was higher than the current average.
44. The greater flexibility was very useful for barristers who had child care needs, who needed to go on maternity leave or who didn't work for a period due to ill health. These barristers were able to complete an appropriate amount of relevant CPD without having to go through the process of applying for an extension or waiver.
45. There were no instances of barristers recording that they had attended courses that they in fact hadn't. This was to be expected as there was little incentive to attend irrelevant CPD activities under the proposed scheme.
46. Areas of feedback from pilot participants focused on the need for guidance on how to plan and set the learning objectives. The learning objectives set were fairly generic in many cases.
47. This was to be expected for two reasons. First this is a new process so it is not unexpected that barristers will be unsure as to what learning objectives to articulate. Secondly a certain level of generic learning objectives is probably necessary. For example all barristers are likely to have a basic objective of keeping up to date with their practice areas.

48. The feedback received from the pilot resulted in the BSB:
- Updating the guidance to include more detail about what barrister could consider when setting a learning objective;
 - Providing specific examples of learning objectives;
 - Being more specific about the kind of information that the BSB will require the barrister to submit;
 - Providing clearer definitions of key concepts and terms in the rules.

2015 Consultation

49. The BSB published a public consultation that ran from 1 June 2015 to 4 September 2015. The consultation presented the new EPP CPD changes and asked for responses on a range of questions concerning the proposed new scheme.
50. [CPD Consultation Report results can be found here.](#)
51. 84 responses were received for the 2015 consultation including from the Chancery Bar Association, the Inns of Court, The Legal Services Consumer Panel and the Immigration Law Practitioners Association. The Bar Council did not provide a response to the consultation.
52. A majority of consultation respondents agreed that compulsory CPD courses were not necessary and that CPD completed in one year should be taken into account in future years. The profession also responded positively to the proposal to allow more flexibility to the types of activities that could be carried out.
53. Consistent with the pilot the main concerns raised were over the clarity of the guidance and how the system of setting learning objectives would operate. The BSB has since amended and updated the guidance document and published this as part of a second consultation on the Handbook rules changes themselves.
54. From the point of view of meeting consumer need, The Legal Services Consumer Panel provided a response that they were assured that the proposed scheme was an improvement on the current scheme. In particular the requirement for barristers to take ownership of their own development and the relevance of activities undertaken.

2016 Rules Change Consultation

55. As well as consulting on the principles and operational processes behind the new scheme the technical rules changes required to the Handbook have also been consulted on. The consultation went public on 1 June 2016 to ran until 1 September 2016
56. 7 responses were received. The responses were received from across the profession and practice areas. Generally the responses were from organisations rather than individuals. Only one individual barrister responded. The organisations that responded were the Chancery Bar Association (ChBA), The London Common Law and Commercial Bar Association (LCLCBA), the Bar Council, the Government Legal Service Bar Network (GLS Bar Network), the Youth Justice Board for England and Wales (YJB), and the Council of the Inns of Court (COIC) Training Reform Working Group.

57. The responses indicated a varied reception of the proposed new scheme but with a general support for the new approach. Most responses indicated that they did believe the proposed rules provided the necessary framework to support the new scheme but put forward drafting suggestions to enhance clarity.
58. Respondents did feel there was a need for further clarity in some aspects of the guidance materials. These points were more narrow and technical in focus around quite specific parts of the guidance rather than a general need for more clarity about the scheme as a whole. This was a positive development as it demonstrated that the principles of the new scheme were understood and it was specific practical requirements that needed further clarification. It is intended that the guidance will go through further revision as we discuss the new scheme with the profession, to ensure this input is appropriately captured.
59. Overall concerns about the proposed rules principally focused on:
- The role that the number of hours completed in the proposed new CPD scheme should play;
 - The definition of CPD;
 - How activity should be recorded;
 - How the New Practitioner Programme and Established Practitioner Programme should be described within the proposed rules;
 - How the new scheme will apply to the employed Bar;
 - Whether the transitional arrangements currently in rQ131 should be retained in the new scheme rules.
60. In response to the valuable feedback received from the rules consultation the BSB:
- Has made final revisions to the proposed CPD rules and guidance to reflect the queries and responses received from the consultation;
 - Has committed to providing examples of how to plan and record activity, relating that to specific areas of practice and stages of a barrister's career;
 - Has engaged with Membership bodies who will be valuable in helping develop these examples;
 - Developed an education and engagement programme to run until the end of the year so that the profession is clear about what is expected in the new CPD scheme;
61. Further engagement with the profession, particularly in the early part of 2017 will include producing relevant FAQs, generic examples of Record Cards and Plans and working with Membership Organisations to produce examples of Plans and Records specific to different practice areas.
62. With regard to rQ131 the BSB is not currently proposing changing the NPP requirements. This rule relates to New Practitioners. In addition this rule is still used. There are currently 2 barristers to whom this rule currently applies. There are also 367 unregistered barristers to whom this rule could apply in the future.

Proposal following consultation and pilot process - amendments to the Handbook

63. In the light of the above evaluation of the current and new system, we are clear that the proposed new approach to the regulation of CPD represents the right balance between supporting barristers and giving them individual responsibility for their own professional development.
64. The BSB would therefore like to move ahead with the changes necessary to implement the necessary rules changes as outlined in paragraph 2 above and detailed in Annex 1 of this application. The LSB is therefore asked to approve the amendments to the CPD Regulations.

Implementation of the proposed new EPP CPD scheme.

65. Implementation of the new CPD scheme will be aligned with current BSB regulatory, supervision and assessment processes to ensure that it is risk based and outcomes focused.
66. The CPD assessment team will be comprised of team members from across the Regulatory Assurance Department. Assessments will be carried out by Regulatory Assurance Department officers, including senior officers. There will be management oversight. Assessors will draw on their experience regulating the current CPD scheme along with their experience of other regulatory functions such as assessing supervision returns, entity assessments and providing supervision to the profession generally.
67. Additional training will be provided to Regulatory Assurance Department members involved in the assessment of CPD requirements under the proposed new scheme.
68. Where complex or very technical matters arise the CPD assessment team will be able to draw on specialist advice from the profession in individual circumstances. This facility will be in place from January 2018.
69. The overall CPD supervision process will be implemented in a similar manner to the current CPD scheme. The process will consist of:
 - Creating a sample of barristers to be assessed;
 - Contacting the sample and asking the barristers to submit their CPD Plan and Record of activities;
 - Assessment of Compliance;
 - Recommending any Corrective Action; and
 - Confirming Corrective Action has been completed.
70. As previously noted the sample of barristers assessed will consist of High Risk barristers and a random spot check of lower risk barristers. The sample will represent a statistically significant proportion of the profession. The barristers will be given a deadline to submit their records and will also be given first and then final reminders to ensure they comply with the request to submit information.
71. The assessment process represents the most significant change in the implementation of the new Scheme. The CPD assessment team will be assessing whether the barrister has completed the recorded activities and whether they have complied with the requirements to produce a Plan and reflect on their activities.

72. The assessment of record cards will be made with reference to the mandatory requirements described in the rules and the good practice examples found in the guidance.
73. The interaction between rules and guidance is that assessors and barristers can use the guidance as examples of good practice and an example framework as to how to meet the CPD requirements.
74. Where a barrister departs from the guidance this will not be assessed as non-compliant. The assessor will consider how the barrister's chosen method meets the Handbook requirements. This is consistent with current Handbook requirements regarding how guidance and supporting material should be considered **(16.4)**
75. The assessor will also check that CPD activities recorded have actually been completed. Barristers will have been asked to submit evidence of completion.
76. If a barrister is not able to provide evidence that a barrister has completed a particular activity then the CPD assessment team can make inquiries. For example by contacting course providers to confirm attendance.
77. Consistency of assessments will be achieved by:
 - Using a risk based assessment framework modelled on the risk assessment frameworks that the Regulatory Assurance Department has used to assess Supervision Returns and Entity Applications;
 - Second assessment where compliance is not clear or a complex issue is identified;
 - Internal review of decisions.
78. In line with our approach to risk based regulation an assessment of non-compliance will not necessarily immediately lead to enforcement action being taken. The BSB will attempt to engage with the barrister to remedy any breach by setting Corrective Action.
79. It is anticipated that implementation of the new scheme will limit enforcement action to persistent non-compliance or where a barrister does not respond or engage at all with the process. For example failing to return a CPD Plan or Record Card.
80. The BSB has produced examples of learning objectives for barristers to use as examples of good practice. In due course to aid with implementation the BSB will produce full examples of Plans and record cards. The BSB is also working with Membership organisations to help them produce examples that are specific to different practice areas.

Risk implications

81. There are risks attached to not having an effective EPP CPD scheme in place, or of not having effective monitoring and regulation of the CPD scheme.
82. Without such schemes, there is the risk that barristers will have an inconsistent and unstructured approach to learning and development or the risk that barristers do no training to maintain standards of practice.

83. We need regulation to make sure barristers are meeting and carrying out their CPD requirements appropriately.
84. This mitigates the risk that the following regulatory objectives in particular will not be met:
 - Protecting and promoting the public interest;
 - Protecting and promoting the interests of consumers;
 - Encouraging an independent, strong, diverse and effective legal profession;
 - Promoting and maintaining adherence to the professional principles.

Review of changes

85. The BSB will be able to review whether the changes have been successful through the following assessments:
 - Assessment of number of CPD providers available to barristers;
 - Assessment of variety of CPD completed;
 - Assessment of compliance and enforcement rates;
 - Assessment of type of feedback provided during compliance assessment process;
 - Assessment of volume of general CPD queries;
 - Equality Impact Assessment;
 - Barrister feedback, facilitated through surveys;
86. As noted the overall purpose of the review is to ensure that the proposed new scheme has been implemented successfully. Individual assessments will provide indicators about different aspects of the implementation.
87. Assessment of the number of CPD providers and variety of CPD completed will provide indicators as to whether barristers have adequate choice available to them when completing CPD.
88. Assessment of compliance and enforcement rate will provide data on whether our assessments are consistent and whether the new scheme has been successful in focusing on relevance of CPD activities. It will also provide an indicator of whether barristers understand the new system.
89. Data on the type and volume of feedback provided during the compliance assessment process will provide a further indicator of whether there are specific parts of the new scheme that need to be better explained. For example if a large number of barristers require feedback on what to include in their Reflections that would indicate that further guidance is needed.
90. There will be an update to the Equality Impact Assessment in order to ensure that the new scheme has had the anticipated positive equality impacts on the profession.
91. Barrister feedback will also be sought after the first CPD year to supplement the information gained from the assessments we will have completed.

92. Data will be collected from these assessments from 2017. It is anticipated that the review and conclusions of the final data sets will be produced in mid to late 2018 after barristers have completed a full CPD year and a spot check of the profession has been carried out.

Statement in respect of the LSA Regulatory Objectives

- i) Protecting and promoting the public interest:** The proposed changes to the CPD Regulations are designed to provide enhanced protection of the public interest by improving the structure and relevance of professional development and training undertaken by the profession, this will better ensure that barristers demonstrate good practice.
- ii) Supporting the constitutional principle of the rule of law:** The amendments are considered to have a neutral effect on this regulatory objective.
- iii) Improving access to justice:** The amendments are considered to have a neutral effect on this regulatory objective.
- iv) Protecting and promoting the interests of consumers:** By having in place CPD requirements that encourage relevant and focused training the BSB is confident that consumers of legal services will benefit from regulated individuals who have a commitment to professional development.
- v) Promoting competition in the provision of services:** The amendments are considered to have a neutral effect on this regulatory objective.
- vi) Encouraging an independent, strong, diverse and effective legal profession:** The proposed changes to the CPD requirements will encourage this regulatory objective. Barristers will be given more independence to plan and complete relevant professional development. Over time this will strengthen the skill base of the profession.
- In addition the changes support diversity by providing more flexibility in the types of CPD that are allowed. This allows barristers who found it difficult to attend certain events due to disability, parental commitments or cost to comply with their CPD requirements.
- vii) Increasing public understanding of the citizen's legal rights and duties:** The amendments are considered to have a neutral effect on this regulatory objective.
- viii) Promoting and maintaining adherence to the professional principles:** The proposed changes to the EPP CPD requirements mean that that the BSB has in place effective regulations to ensure that barristers are committed to ongoing structured development.

Statement in respect of the Better Regulation Principles

- i) Transparent:** The proposed EPP CPD regulations provide clear coherent and comprehensive details of the BSB's CPD requirements as well as accompanying guidance. There is also clarity as to the purpose of the CPD requirements and why the changes to the current requirements are being made. This explanation and the removal of arbitrary and confusing restrictions should only help to provide greater transparency of the CPD requirements for consumers and regulated persons.
- ii) Accountable:** Decisions made in the proposed EPP CPD regime, including supervision or enforcement decisions will be made with detailed reasoning to the regulated person. These

measures will ensure that the BSB remains accountable for actions it takes in relation to regulated persons.

iii) Proportionate: The proposed changes are proportionate as they allow regulated persons to focus on completing relevant CPD activities rather than obtaining an arbitrary number of hours. Conversely the regulator can focus on providing a proportionate risk-based and outcomes focused response to those regulated persons who may not be fully compliant with the CPD requirements.

iv) Consistent: Currently barristers must complete a set number of hours of CPD activities. Which activities count towards CPD and which don't is not always clear. Further the quality or relevance of the activities is not assessed.

Therefore a barrister's commitment to CPD is not always accurately reflected in the current assessment. This means there is an inconsistent approach to the completion of CPD across the profession.

The BSB is satisfied that assessing all barristers on the basis of how they have planned, structured and completed their CPD will encourage a consistency of approach.

v) Targeted: The Regulations as a whole seek to ensure that the BSB's supervision and enforcement processes are only targeted at those who present the most risk to the public and consumers. The proposed changes do not detract from this.

Statement in relation to desired outcomes

93. The BSB continues to ensure that it has in place a regulatory framework which is aligned with risk-based, outcomes-focused regulation. Through these proposed changes, the BSB has sought to improve and provide for better regulatory practice which is in the public interest.

94. The proposed revisions to the EPP CPD rules are designed to achieve the following outcomes:

- Improved focus, structure, flexibility and relevance of the CPD process, both in the planning for the year and the activities completed;
- Consistency of approach in the assessment, supervision and enforcement of CPD; and
- A more proportionate approach to dealing with breaches of the Handbook.

Statement in relation to impact on other Approved Regulators

95. The BSB does not believe this application will have any impact, positive or negative, on other Approved Regulators.

Implementation timetable and operational readiness

96. The changes to the CPD rules are intended to come into effect on 1 January 2017.

Equality and Diversity

97. We have carried out an equality assessment of the new approach to CPD. There is no expected disadvantage created by the introduction of the new CPD scheme on the grounds of any of the protected characteristics. In addition a number of benefits have been identified.

98. The proposed CPD regime is adaptable, allowing for breaks in practice or for those returning to practise. This provides more flexibility for some members of the professions in particular those on maternity leave.
99. The CPD regime increases the types of activities that are permissible. This will make it easier for barristers to complete CPD activities without having to attend specific locations. This makes completion easier for barristers who have parental commitments or mobility difficulties for example.
100. To address any perceived risk of discrimination as a result of the age of a barrister, we have made a distinction between seniority of position and age in the proposed assessment of CPD.

Annexes

Annex 1 – Copy of current CPD rules and proposed CPD rules change

Annex 2 – Supporting guidance to the proposed CPD rules

Annex 3 – Supporting guidance to the proposed CPD rules with Handbook references highlighted and noted.

Annex 4 – Current EPP CPD scheme process summary