

Amendments to the Bar Training Regulations – Entry Requirements for the Bar Professional Training Course

**Rule Change Application Made by the Bar Standards Board
to the Legal Services Board under Schedule 4, Part 3,
Paragraph 20(1) Legal Services Act 2007**

This application is made in accordance with the requirements set out in the Legal Services Board's Rules for Rule Change Applications. The Bar Standards Board wishes to amend the Bar Training Regulations to require all students to attain a minimum 7.5 score in each of the four categories of the International English Language Test (IELTS), or accepted equivalent, for entry onto the Bar Professional Training Course [BPTC].

Any queries about this application should be made to:

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The proposed alteration

- 1 The Bar Professional Training Course [BPTC] is a course of one academic year's duration course of 120 credits at postgraduate level in accordance with the national Framework for Higher Education Qualifications. The Bar Standards Board wishes to amend regulation 25 of the Bar Training Regulations to require all applicants for the BPTC to complete an English language test to a specified standard. It is proposed that this should be achieved by the addition of 25(c) to the existing BTR 25 as below [shown in bold]:

25. Before commencing the Vocational Stage, a person must:

(a) have completed (or been exempted under Part VII of these Regulations from) the Academic Stage; and

(b) be a member of an Inn of Court.

(c) have achieved a current score of at least 7.5 in all parts of the Academic IELTS Test or equivalent score in another English language test recognised by the BSB

Note: "current" in this context means valid as defined by IELTS. Since, as is well known, language skills tend to deteriorate if not kept up, then currency is important. This is defined by IELTS since their certification is current for two years only¹.

Nature and effect of existing regulations

- 2 At present, the Bar Training Regulations (cited above para 1 and Annex A, p. 5) specify the entry requirements for the Vocational Stage of Training as having completed the Academic Stage and having membership of an Inn of Court. This is designed to ensure that only those with appropriate skills, capabilities and ethics would be able to undertake the Vocational Stage. In addition, it was always considered absolutely essential that entrants to education and training for the Bar have complete proficiency in English – because of the nature of the profession as dependent on oral and written skills in the English language in order to practise to the necessary professional standards. Further, it is vital for students to have fluency in English because, unlike some courses of study, this is a skills based vocational course based on interaction and role play involving all students with live assessment, rather than independent learning where candidates are assessed individually in their written work, examinations etc.
- 3 In the 2009-2010 Course Specification and Guidance ('The Golden Book' Annex B, see p. 55) the English language requirement was specified as follows:
 1. *Non EU/EEA nationals for whom English or Welsh is not their first language are required to verify that they have achieved a minimum score of 7.5 in all parts of the IELTS academic test. Certification must be current in terms of IELTS specifications.*

¹ From IELTS website: 'Recognising organisations will not usually accept a Test Report Form that is more than two years old unless you provide evidence that you have actively maintained or tried to improve your English since taking the test. The IELTS Test Partners cannot confirm the validity of test results that are more than two years old.' (IELTS information for candidates p. 3)

2. *EU/EEA nationals for whom English or Welsh is not their first language are required either:*

(a) to verify that they have achieved a current score of at least 7.5 in all parts of the academic IELTS test or other recognised equivalent English language test (“equivalent” for these purposes meaning that the test must examine the candidate’s written and spoken English to a level and in a way that enables meaningful comparison with the requirements of the IELTS test) obtained no more than two years prior to the date of the candidate’s commencement of the BPTC)

Or

(b) to produce alternative equivalent evidence of satisfactory oral and written competence in English obtained no more than 2 years prior to the date of the candidate’s commencement of the BPTC course (such as certification of a Qualifying Law Degree, CPE or GDL that has been taught and assessed in English by a HEFCE funded UK Higher Education Institution)

3. *On entry to the course students will be required to sign a statement that they are aware that this standard is required of all students who enter the BVC, and that they consider that they have met it.*
4. *Subsequent to being admitted to the BVC, should the BVC provider consider that a student’s language ability is unsatisfactory, it may require the student to take the IELTS (at the student’s cost). Should the student then fail to achieve a score of 7.5 in all sections of the IELTS the provider may require the student to:*
 - a) *withdraw from the course;*
 - b) *intermit and improve their score prior to being re-admitted to the course;*
 - c) *require the student to take such remedial training in English language as the provider sees fit;*
 - d) *Impose such other requirements as the provider deems appropriate.*

In all cases the student is wholly liable for any costs incurred.

- 4 The English language requirement in the Course Specification and Guidance which is in place from Academic Year 2010-2011 (‘The Blue Book’ Annex C, see p. 78) was similar in principle, although worded slightly differently (but see further paragraph 6 below):

3.2.3 English Language requirement

a) Fluency and proficiency in the English Language is required for entry to the BPTC. All applicants must demonstrate that their oral and written English language ability is fluent, and readily comprehensible to native English speakers. Those whose first language is not English or Welsh must achieve a score of 7.5 in all parts of the IELTS Test. This must be verified by Providers.

b) If, subsequent to being admitted to the course, a student’s language ability (particularly in relation to oral fluency and comprehensibility) is considered unsatisfactory, he or she will be required to take the IELTS test. If the student

fails to achieve a score of at least 7.5 in all sections of the IELTS test, they must withdraw from the course.

c) In all cases the student will be wholly liable for any costs incurred.

- 5 Before the formal requirement above was implemented (ie that those whose first language was not English must demonstrate prior to entry that they are of a standard of 7.5 IELTS or above), extensive consultation took place with the Providers of the Bar Course of which there were then eight: BPP London and Leeds; Cardiff University; City Law School; College of Law London and Birmingham [CoL]; Manchester Metropolitan University [MMU]; Nottingham Law School [NLS]; University of Northumbria Newcastle [UNN]; University of the West of England [UWE] . They were largely supportive of the strict application of the 2002 rule, as shown by their responses (Annex D) a selection of which are given below.

Some key comments made by Providers at the time, demonstrate clear support for proposals to reinforce the existing English language requirements:

1. *What effect, if any, do you envisage this change having?*

College of Law Admission Dept: *“It would improve the standards enormously.”*

Deputy Course Director, Cardiff *“In theory, it should make no difference as it is not a new requirement”*

2. *Are you aware of any evidence or indication that the imposition of this requirement might have an adverse effect on any minority group, in terms of enabling access to training for the Bar?*

Course Director, UWE: *“Yes both Bangladeshi and Chinese Malaysian but that is not a reason for reducing the requirement.”*

College of Law Admission Dept: *“It will reduce the number of eligible students from ethnic minorities but sadly many of the applicants at present do not have a sufficient command of English to undertake a BVC with success and their weakness in communication has an adverse effect on other students.”*

7. *If you have any further thoughts on IELTS please include them.*

Course Director, UWE: *“It is clearly discriminatory in its present form insofar as not all applicants are subject to it”*

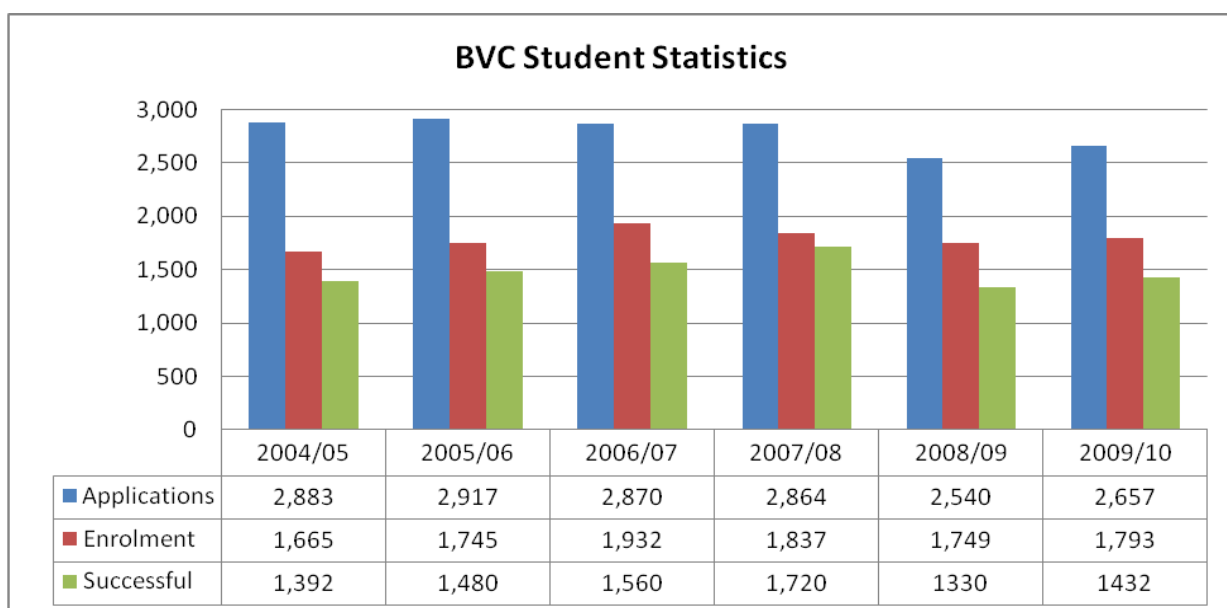
Course Director, UNN *“Imposing the IELTS requirement will do nothing but good for the Bar of England and Wales.”*

- 6 Recognising that there are other English language tests which measure oral and written skills to an objectively equivalent standard to that demanded by IELTS, the requirement detailed in paragraph 4 above has since been amended to include allowance of scoring 28 in each section of the Test of English as a Foreign Language [TOEFL] and another test (by Pearson Vue) has also been specified by the BSB as sufficient to satisfy the English language requirement. The current full English language rule can be found on the website at

<http://www.barstandardsboard.org.uk/news/newsarchive/256.html>

The proposed new rule is included at Annex E.

- 7 Typically about 2,600 apply each year to do the Bar Course. See chart below.



- 8 Of those students, the majority declare that English is their first language. It has only been necessary for this to be declared on enrolment since 2009 when the IELTS requirement was strengthened.
- 9 On average about 15-20 students are required by the training providers to take the IELTS test each year after commencing the course. We do not currently have further data on this however are waiting for responses from Providers with numbers of those who are asked to take the test, those who do not score 7.5 in each section and those who are subsequently ejected from the course. We will inform the LSB as soon as it is available.
- 10 It is not possible to compare the Bar Course first time pass rates with other similar courses because there is no other course that is 'similar' to the Bar Course. It is unique and cannot be compared with other postgraduate or postgraduate law courses, with the possible exception of the LPC. We do not hold pass rates for the LPC however are currently awaiting some numbers from the SRA for comparison.

Difficulties with the existing Policy

- 11 The existing entry requirements to the Vocational Stage of training for the Bar of England and Wales were considered in detail by the BSB Review of the BVC (2007-08). The Working Group, Chaired by Derek Wood QC, reported in July 2008 that the existing entry requirements had been found to be insufficient in their present form to maintain the necessary standards on entry for the Bar Course: 'The student body includes graduates who are so far lacking in the qualities needed for successful practice at the Bar, including fluency in spoken and written English, that they would never obtain pupillage, however many pupillages were available.' (Annex F, see p 2, para 6). This is borne out by statistical evidence of low standards on the course. In

fact, for the academic years 2003-09 only an average of 64% of BVC students passed all modules on the first attempt:

AY	First time pass rate
2003-4	69%
2004-5	63%
2005-6	61%
2006-7	60%
2007-8	65%
2008-9	65%

- 12 Although it could be argued that this is due to Providers upholding standards, it still demonstrates that students are admitted who are not capable of passing the course after one year of academic study for which it is designed. This is detailed in the Wood Report on the BVC (Annex F, para 72, Table 3a). This may of course not be due solely to insufficient English language skills but evidence overwhelmingly points to poor English having a major effect (see compilation of comments from Providers, panel members, students, External Examiners and others, Annex G). Examples are provided of material consisting of enquiries and comments from prospective candidates that demonstrate the poor language skills of students wishing to apply for the course (see Annex H). It must be remembered that these candidates are generally applying from the position of being on a law degree programme in the UK or elsewhere, but wishing to commence the Bar Course in the immediate future.
- 13 Experience has shown that students who do not have sufficient ability in spoken and written English have great difficulty in following the Course, and are likely to fail. In addition, the course is highly skills-based and interactive, with typically over 70% of the course being delivered by small group practical sessions. These are based on role play in court room scenarios dealing with Examination-in-Chief, Cross Examination, Witness Handling, Negotiation and Conferences with clients by means of case studies based on real life cases. The 'Blue Book' in fact specifies (Annex C, A3, 3.3 1) that 'the preponderance of teaching should be delivered by small group lessons'. For example, taking the lecture/SGS split as a good indicator, Nottingham and Kaplan on the basis of the number of events has approximately 70% Small Group Sessions and 30% lectures. On the basis of the number of contact hours (SGSs being longer than lectures) the ratio of small sessions is even higher (80% Small Group Sessions and 20% lectures).
- 14 Poor participation in class because of insufficient ability in English thus immensely diminishes the quality of the learning experience for the class as a whole, as well as for the individual student. There continues to be consistent criticism from the profession, providers and students, of the levels of English of a significant number of students on the course. That criticism is not directed solely at students whose first language is not English, but also at those who have declared English as their first language. See comments by Providers, other students, panel visitors and external examiners (Annex G).
- 15 The Wood Working Group also reported on the results of a student questionnaire which the Group had commissioned (see Annex F, Wood Report Annex 5). A good response was obtained from over 500 current and recent BVC students in 2008 who were asked for their views on the course, across all Providers and with a good mix of gender, academic and ethnic background amongst respondents. Students were asked about their views on a range of subjects including curriculum, teaching, assessments, resources etc, as well as their overall experience. Significantly for the

proposal to implement an IELTS requirement for all students, was the fact that the results showed that 49% of students considered that the presence of weak students had affected their experience (rising to 68% in one Provider). Qualitative comments made by students relating to this issue confirmed that this almost always referred specifically to English language skills (see Annex F, Wood Report Annex 5 and Annex G, p. 6 to this document for student comments).

- 16 In addition, whilst conducting this review the Working Party had over 80 meetings with students and teachers on the Bar Vocational Course, with the Specialist Bar Associations, Pupil Supervisors and the Inns and Circuits, and similar comments were made concerning the difficulties that many students face with the English language. (See Annex G for a compilation of comments from BSB visits, Sub committee meetings, Providers etc).
- 17 The evidence provided above clearly demonstrates why secure entry requirements need to be determined and adhered to, especially proficiency in the English language. There is a need for the Regulator to set and monitor this as a specific entry requirement. This is essential as a regulatory activity, rather than leaving the Providers to assess language skills and determine what tests are needed and at what level for their students. A system which is regulated rather than left to individual Providers of the Bar Course will ensure fairness and continuity for all students.
- 18 It was hoped that the reinforcing of the 2002 rule, for those whose first language is not English, would solve the issues of high failure rates and the problems of students with weak language skills impacting on the experience of others. However, the language of some students who have declared English as their first language has been found to be inadequate and they have been required to take the IELTS test when part way through the course. This is traumatic for students and immensely difficult for Providers if they have to consider asking students to leave part way through. The existing policy (for the test to be taken by those whose first language is not English) has proved inadequate for a number of reasons:
 - a. There are considerable difficulties in defining 'first language'. This is particularly problematic amongst ethnic minorities who (often domiciled in countries where a form of English is an official language) speak their family language at home but use English for education, work or other purposes.
 - b. The requirement for only 'those whose first language is not English' to be required to take the test might be perceived as discriminatory
 - c. Some of those who declare English as their first language may have lesser English language ability than those who confirm it is their second language. Examples here might be those who speak a variant form or dialect of the English language, compared with those who are fluent in English as a second language.
 - d. Those whose first (and possibly only) language is English may still have inadequate skills. The fact of English being, or being declared as, their first language in no way guarantees that the requirement for both written and spoken English is met as required by the BPTC Handbook to go on to practise at the Bar of England and Wales
 - e. Many students born to migrants in the UK or international students have English as their first language, but it is often impossible to judge if a particular student's first language is English or not, without observing them in their homes
 - f. There are issues arising from EU law concerning rights of EU citizens to study in member states without being subject to additional entry requirements
 - g. Some of those who claim exemption because of EU legislation may have poorer English than those from countries where English is a second language (eg the Indian sub continent). Conversely, some European citizens with excellent

language skills may have better English (as a second language) than those from countries where a form of English is an official language.

- h. Students who declare English as their first language (and are thus exempt from the IELTS test) are, if they meet other requirements, accepted on the course. It is only after they arrive and are observed for a few days/weeks into the course that Providers become aware that some who make this declaration have inadequate English skills. The students will then be required to take the test and if they fail, to leave. This is extremely difficult and distressing for students already on the course – and for staff involved too. University expulsion and appeals procedures have to be invoked, which can take months. It is very difficult indeed to remove students from the course, not only because of distress to individuals but because of the complexities of the University processes (including appeals processes) over which the BSB has no control.
 - i. The present requirement is based on self assessment and solely relies on the individual's claim. Applying such a requirement is therefore in itself flawed.
 - j. Since, once on the course, it is difficult for a Provider to make a student leave if their language skills are inadequate, this can be very unfair on students who were turned away for not having the required IELTS certification. This also leads to inconsistency since some Providers turn students away if they do not have IELTS certification whilst other Providers (to whom these students often turn) accept a declaration of English as first language to allow them to start the course. Due to knowledge having spread amongst students that a declaration of first language can mean a place can be obtained and it is difficult for Providers to ask them to leave, anecdotal evidence suggests that declarations of this nature are being made. This is totally unfair on those students who, honestly stating that English is not their first language, take the test but do not reach the minimum standard and thus are prohibited from doing the course.
 - k. Correspondence has been entered into by the BSB with individuals and groups (for example the Highly Skilled Migrant Programme) who have claimed that the argument of applying the IELTS test selectively 'sounds irrational and unreasonable' (Director, HSMP Forum)
- 19 As stated on the IELTS website (<http://www.ielts.org/>), IELTS is the world's proven English test. Over 1.4 million candidates take the test each year to start their journeys into international education and employment. IELTS is recognised by more than 6000 institutions in over 135 countries and is the world's proven English test. Over 1.4 million candidates take the test each year to participate in international education and employment. It is recognised by more than 6000 institutions in over 135 countries. The test costs in the region of £110 (or equivalent currency) to take.
- 20 The IELTS system tests language skills in 4 categories: reading, writing, speaking and listening. Full details and descriptors for each level are provided on the IELTS website at: <http://www.ielts.org/PDF/IELTS%20Guide%20for%20Agents.pdf>

The bands/grades are defined as:

- 9 **Expert User:** Has full operational command of the language: appropriate, accurate and fluent with complete understanding.
- 8 **Very Good User :** Has full operational command of the language with only occasional unsystematic inaccuracies and inappropriacies. Misunderstandings may occur in unfamiliar situations. Handles complex detailed argumentation well.

- 7 **Good User:** Has operational command of the language, though with occasional inaccuracies, inappropriateness and misunderstandings in some situations. Generally handles complex language well and understands detailed reasoning.
- 6 **Competent User:** Has generally effective command of the language despite some inaccuracies, inappropriacies and misunderstandings. Can use and understand fairly complex language, particularly in familiar situations.
- 5 **Modest user:** Has partial command of the language, coping with overall meaning in most situations, though is likely to make many mistakes. Should be able to handle basic communication in own field.
- 4 **Limited User:** Basic competence is limited to familiar situations. Has frequent problems in using complex language.
- 3 **Extremely Limited User:** Conveys and understands only general meaning in very familiar situations.
- 2 **Intermittent User:** No real communication is possible except for the most basic information using isolated words or short formulae in familiar situations and to meet immediate needs.
- 1 **Non User:** Essentially has no ability to use the language beyond possibly a few isolated words.
- 0 **Did not attempt the test:** No assessable information provided at all.

Using the IELTS official descriptors, aligning between 7 and 8 seems reasonable for a course designed for progression to being Called to the Bar of England and Wales. A score of 7.5 in all sections is thus clearly appropriate and has been agreed as the minimum requirement for the course. All four sections (reading, writing, speaking and listening) are relevant for prospective students who wish to study the course designed for those who aim to practise at the Bar of England and Wales, so a minimum of 7.5 should be required in each section (ie not an average). The BPTC Sub Committee agreed that 7.5 IELTS is the correct minimum standard for the course after discussing the test with the organisers and reading and listening to example student responses to the different sections of the test.

Various alternative equivalents will be available, to ensure fairness, eg equivalent scores in TOEFL and the Pearson Vue English Test. A degree from an English University cannot always satisfy the English language requirement, as a degree tests academic rather than language (particularly oral), skills.

21 IELTS requirements of other postgraduate Higher Education Courses

The vast majority of UK universities specify an IELTS requirement for both undergraduate and postgraduate degrees. A requirement of IELTS 7.5 is very standard for postgraduate courses for students whose first language is not English, not only in the UK, but worldwide. (The undergraduate requirement is normally set at 6 or 6.5 IELTS). Variation does occur depending on the nature of the course, that is, whether English language skills are essential to the discipline or less so, as in some

scientific areas. Exemptions are sometimes permitted for those who have undertaken a degree in the medium of English, particularly at a UK university, but we have found that the holding of a degree award taught in English cannot always be taken as evidence of fluency. Innumerable examples of an IELTS 7.5 requirement for postgraduate courses can be found. Required scores are invariably higher for Law programmes compared with other, eg scientific, subjects. Examples of requirements include: Oxford Law undergraduates 7.5 IELTS; Edinburgh Law undergraduates 7.0 IELTS, Cambridge Law postgraduate 7.5 IELTS; UCL Law postgraduates 7.5 IELTS etc (see Annex J for further examples)

On the other hand, some UK universities do not adhere to strict language entry requirements which causes problems. So for example, the BSB is aware of one institution which requires lower levels and advises students not to worry if they have not met requirements since they can improve their English during study. This is the sort of thing that has led to holders of UK degrees lacking fluency in English and means that the BSB cannot depend on attendance at a UK university as being evidence of written or oral fluency in English. There is no time for improvement during the short BPTC. It cannot include remedial elements. Some institutions allow exemptions for those who have studied in English but the attached examples from prospective applicants (Annex H) show that a law degree undertaken in English (in the UK or overseas) is sadly not always an indication of fluency in the English language.

- 22 Similarly, in the professions, IELTS requirements are commonplace. A requirement of IELTS 7 is enforced by the Nursing and Midwifery Council, who require (since 2007) that overseas trained applicants for their register have a minimum score of 7.0. The Chartered Institute of Marketing asked of applicants "if English isn't your first language, you will also need to provideevidence of at least IELTS 6.5". Further examples of professional body requirements may be provided if requested.

Nature and effect of the proposed alteration

- 23 The Bar Standards Board proposes that the Bar Training Regulations be amended so that regulation 25 reads:

25. Before commencing the Vocational Stage, a person must:

(a) have completed (or been exempted under Part VII of these Regulations from) the Academic Stage; and

(b) be a member of an Inn of Court.

*(c) **have achieved a current score of at least 7.5 in all parts of the Academic IELTS Test or equivalent score in another English language test recognised by the BSB***

Possible adverse effect

- 24 The rule change (to require all applicants to demonstrate they are of 7.5 IELTS standard) may well have an effect on overseas and ethnic minority candidates, since this group may include significant numbers of people who are less fluent in the English language. However we believe that this impact is justified since the introduction of IELTS is a proportionate method of ensuring that those participating in the BPTC have the necessary level of oral and written skills in the English language

to engage successfully with the course. This goal is justifiable under the BSB's regulatory responsibilities. The requirement will apply equally to all applicants.

- 25 The BSB thus believes there is proportionate justification for a requirement for all applicants to demonstrate their proficiency in the English language. Since language problems have been proven to have such an adverse impact on students' own experience of the Course and that of their fellow students, it is considered that the possible adverse impact is proportionate to the magnitude of the problem and a necessary consequence, in order to overcome it. Further, it is important to note that currently the rule is perceived by some to be discriminatory on the basis that it is said to create a barrier for those without first language English which does not exist for those who have been brought up speaking English in some form.
- 26 It could be argued that there will be no additional effect on overseas students resulting from the proposed rule change, since those whose first language is not English are at present required to take the test anyway. Currently, Providers can require any student with a low level of English language to take IELTS regardless of their first language and require them to withdraw if they do not pass. It is preferable for students to know this prior to entry than to suffer the trauma (and expense) of being asked to withdraw. This applies to home and EU students as well as overseas. We would expect that the students who may find themselves in this situation would be the ones who would be identified by failing IELTS. They would not therefore not have been able to start the Bar Course in any case, saving them time and expense.

The extension of the IELTS requirement to all applicants for the BPTC will also lead to an increase in the number of disabled applicants taking this test. In order to ensure that disabled students are not disadvantaged by the extension of this requirement, it is important that that reasonable adjustments can be made. This is particularly the case where prospective students have impairments related to the use of language e.g. dyslexia or very severe speech impediments. The BSB has therefore taken steps to verify that IELTS (jointly managed by British Council, IDP: IELTS Australia and the University of Cambridge ESOL Examinations) has a reasonable adjustment policy in place for those taking the exam.. The BSB understands that the IELTS has procedures in place for reasonable adjustments for candidates with disabilities, as defined on their website: 'Test centres make every effort to cater for the special needs of disabled candidates. It is our aim for all candidates to be assessed fairly and objectively. If you have a special need, talk to your local test centre when registering.' Details are provided on the IELTS website, in the booklet for candidates: http://www.ielts.org/pdf/Information_for_Candidates_booklet.pdf

Candidates are advised as follows:

'Special Requirements In order to ensure that the language ability of all candidates is assessed fairly and objectively, IELTS provides a comprehensive service for candidates who have special requirements, including specific learning difficulties, hearing difficulties and visual difficulties. If you require a modified version of the test, for example in Braille, you must give the test centre three months' notice. This notice period is necessary for the modified test version to be prepared. If your circumstances require only special administrative arrangements to be made, such as extra time, you must give the test centre six weeks' notice. Please contact your test centre to discuss your requirements.

With regard to British Sign Language, the BSB has never had a request for completion of the Bar Course for the Bar of England and Wales using sign language. There is no call for this since the language of the courts in England and Wales is English (<http://www.hmcourts-service.gov.uk/index.htm>) and cases cannot be conducted in British Sign Language, although translators and interpreters in many languages are of course widely used where necessary for witnesses etc. (See also Annex I, page 6.)

- 27 There is, of course, a cost implication for those who are required to take IELTS, which may cause some adverse impact to those who cannot afford the cost. Judging from the fact that the current fees for the course range from £14,995 (BPP) to the least expensive which is £10,700 (UNN), the cost of IELTS at £110 is approximately 1% of the cost of the very cheapest course (and an even smaller proportion where fees are higher than this). The cost of undertaking the course is naturally compounded by the need to meet travel and living expenses etc as well. The Bar Standards Board considers that an increase in costs by this low percentage is justified by the necessity for the requirement demonstrated above, and the positive effects on the courses and indeed the profession that are likely to result. In addition, students who are not able to achieve the required standard for IELTS will know at an early stage that they do not have the necessary language skills.
- 28 An Equality Impact Assessment was drawn up in May 2009 related to the proposal to strengthen the existing (2002) requirement for applicants whose first language is not English to demonstrate that they are of 7.5 IELTS standard. The policy was reviewed following the first years of implementation with the result that a further Equality Impact Assessment has been carried out (2010) for the proposed policy of an IELTS requirement for all applicants (attached as Annex I). These have enabled the BSB fully to consider the equality implications for different protected characteristics associated with the changes and, where possible, mitigate their impact.

Why we wish to make the alterations

- 29 The Bar Professional Training Course is the gateway to practice as a barrister. Practice at the Bar demands a high level of ability in the written and oral use of the English language. Consequently, students enrolling on the Bar Course are expected to be completely fluent in English, conversant with the rules of grammar and able to express themselves clearly and accurately both when they speak and when they write. The aim of this policy is to ensure that all Bar Course students have fluency and proficiency in the English language and that they can demonstrate their oral and written English language ability.
- 30 The application of the current regime has proved to be difficult; it has been found that there are clear difficulties in defining what is the 'first language' of some applicants and that there is no uniform approach among the students or providers as to when someone is considered to have English as a first language. Further as already identified above, the problems encountered with weak language skills extend across the student body and not just to those for whom it is possible to say that English is not their first language.

There have been instances of reports that students have falsely stated that English is their first language in order to start a Course; applying the requirement to all students would remove the burden from the BPTC Providers to police language levels which has proved difficult to do effectively. Further there have been instances when

students have been required to undertake IELTS part way through the Course due to poor language skills but, although they have failed to achieve the requisite score, they have not been removed from the Course due to the lapse of time or a failing in the admissions process meaning that they cannot be legitimately removed. Applying a language requirement to all students consistently would remove these logistical problems encountered within the current regime. There are approximately 10 cases each year that are pursued and notified to the BSB. Precise numbers can be obtained if needed. Because of the difficulties, there are undoubtedly more that are not pursued. The majority of Providers tend to accept all those who meet the minimum requirements. So, with no formal language requirement needed prior to entry, candidates with weak English (many of whom declare English as their first language) are accepted on the course. This is not a barrier to entry but a requirement needed for the course in order for students successfully to undertake it. There are also the interests of other students to consider in such an 'interactive' course. Finally, it is not in the interest of weak candidates to undertake to course and spend a great deal of time and money on it when they are unlikely to succeed.

- 31 As has been noted above, concerns have been raised, for example by the European Commission, that the current regime may be discriminatory. The Bar Standards Board considers that expanding the IELTS rule to cover all students is the fairest, least discriminatory way of applying an English language test requirement. See EIA attached at Annex I. [The European Commission has indicated that it shares this view]. The BSB considers that current arrangements could be open to an accusation of discrimination, due to the difficulty of defining 'first language' and the effect that this may have on certain groups. This is why approval is sought for the test to be applied equally to all.
- 32 As quality assurers of the Bar Professional Training Course, the BSB is concerned to ensure that students are gaining a valuable experience on the course, and that the students exiting the Course are of a high enough standard to begin a pupillage at the Bar of England and Wales, should they wish to do so. By raising entry standards to the Course the BSB will be doing more to ensure that the experience of other students are not affected by a lack in language skills, and equally that individual students who do not have the requisite skills for the Course are not recklessly permitted to attend the Course and pay the large fees and expenses associated with it. The Bar Standards Board takes its obligations to ensure equality of entry to the Bar Course (BPTC) very seriously. Those being called to the Bar of England and Wales clearly have to have a certain level of proficiency in English (or Welsh). Having no IELTS test or other language requirement is not an option given the need to protect the public interest and the strong evidence that, without this, students would be admitted to the course who were not capable of undertaking it.
- 33 It should be emphasised that students who do not pass the IELTS requirement first time are not prevented from re-taking the test once they have improved their language skills, and they can then apply for admission to the BTPC.

The regulatory objectives

Protecting and promoting the public interest

- 34 The need for proficiency in English is fundamental to the concept of providing high quality legal services in the public interest. Practice at the Bar demands a high level of ability in the written and oral use of the English language and it is considered the

public interest is best met using a stipulated entry requirement, applied fairly to all applicants. No members of the public should find themselves represented by a barrister with a poor command of language. Moreover, it is in the public interest that the learning experience at Bar School should be of the highest quality and not adversely affected by those with inadequate language skills.

- 35 While it is true that some of those with weak English language skills return to their own jurisdictions on completion of the course, the training is for the Bar of England and Wales and all must reach the necessary standard for this. It is true that the standards of the course itself are also an issue (not only the language skills), which is why, following the review of the BVC in 2007-08, the new course with higher standards was introduced. This is demonstrated by the lower pass rates subsequent to 2008-9 which are expected to continue (especially with the reduction in the number of resit opportunities. However, the intention is not simply to raise standards to increase the fail rate. It is important that those unlikely to succeed are not accepted on the course in the first place.
- 36 While some may in future practise in their own language (which is not English) there is evidence that many practise in jurisdictions where English remains the official language of the court. In this context it is worth drawing attention to the recent email from a Barrister-at-Law (Annex G, p.7) in which it is stated that "*In our Supreme Court of Bangladesh and High Court the official language is English and our general public trusts barristers as highly qualified and respected advocates. But when they see/work with these lower quality barristers, it degrades the respect for such title. Last 3/4 years, about 100's of students are returning with the title Barrister. We are concerned about the quality of such Barristers rather than the numbers.*" This shows that students with poor English language skills who are managing to pass the Bar Course are affecting the Bar in their home countries. It would help to protect public interest overseas as well as for the public of England and Wales by requiring all students to attain a minimum threshold in the IELTS test so that applicants could not slip through the net by declaring English as their first language.
- 37 The requirement for which approval is sought is indeed primarily concerned with entrance onto the course but the impact of weak students leads to a poorer learning experience for those who will go on to provide the public service. It is true that those with weak language skills are unlikely to progress to pupillage and become fully qualified practising barristers, but at present those who successfully complete the course and are members of an Inn of Court are called to the bar and can be styled 'barrister.' In addition, many return overseas where no further training or qualifications are needed in their home jurisdictions, thereby damaging the reputation of the Bar of England and Wales.

Supporting the constitutional principles of the rule of law

- 38 Implementation of IELTS for all for entry to the Bar Course will not have any effect on the principles of the Rule of Law, except in helping ensure the quality of barristers and the standards of the training courses.

Improving access to justice

- 39 The Bar Standards Board acknowledges that it might be perceived that there will be a limited impact on access to justice from requiring all students to take IELTS. However the BSB believes that the proposed regime will in fact promote improvement of access to justice by helping to ensure that the students who exit the

Bar Professional Training Course are of a requisite standard academically and linguistically. Maintaining high standards on the Bar Course will inevitably feed through into the Bar, resulting in many talented and linguistically capable Barristers available to represent the public.

Protecting and promoting the interests of consumers:

- 40 In order to protect and promote the interests of consumers, action must be taken to ensure that consumers can make informed choices about quality, access and value. For a Barrister to be able to inform a client or instructing solicitor that they have undertaken IELTS to gain entry onto the BPTC, is to be able to give that consumer more information about their qualifications. It is certain that consumers feel more comfortable employing a service when/if they have more information about that service, having a common IELTS standard can provide consumers with more information about the service.

Promoting competition in the provision of services

- 41 As has been addressed several times throughout this submission, raising the entry requirements will doubtless increase public confidence and standards at the Bar. Increasing standards can only help to promote competition, although there may be a limited and very long term effect, there will certainly not be a negative effect on this regulatory objective. Also, competition, in the provision of the course, would not be affected by the language requirement since it would apply equally to all. A possible reduction in the number of applicants can only help to drive up quality amongst the providers.

Encouraging an independent, strong, diverse and effective legal profession

- 42 The Bar Standards Board does not consider that implementing IELTS for all will have any effect, adverse or otherwise, on the independence of the legal profession.
- 43 The BSB is committed to promoting diversity in the profession so that those with the right abilities are able to make a career as a barrister irrespective of their background, race, religion, gender, sexual orientation, disability or age. This means that all candidates must be treated fairly, in the same way, as they apply for the BVC/BPTC. The application of the test for all candidates will not involve any additional implications for those with disabilities. Reasonable adjustments are made by IELTS for any who might be affected. The concept of an open and fair system, applicable in the same way to all, underlies the recommendation of the Wood Report to introduce an Aptitude test for all for admission to the Bar Course (Annex F, p. 2).
- 44 There may be an argument that introducing IELTS for all is likely to affect diversity at the Bar. While this would seem to be a possible consequence since there is risk of some effect to the number of overseas students on the Course; the BSB does not believe that this will be the case. The standard required of students taking the IELTS test is set at a level that is the same as that generally required for under-graduate and post-graduate study in the United Kingdom. The percentage of applicants unable to meet the requirement will be very low and those individuals affected can take the test again once they have improved their language skills. The BSB has considered whether there will be any affect on entry to the Bar of England & Wales itself and does not believe that there will be. As already indicated, the existing BTPC requires a high level of written and oral English skills. Those passing the course and moving on

to either pupillage or other employment utilising their qualification will have language skills that are at or above those required to meet the IELTS requirement.

- 45 As has been demonstrated, there are quite high numbers of people with poor language skills getting on to the course which is having a fairly significant impact on overall performance. It is anticipated that once the new standards for entry and exit on the course are fully developed there will be few people affected by the additional entry requirement. The effect of candidates with weak language skills has been well documented and contributed very significantly to the need for a review in 2007. The proportion of applicants unable to meet the requirement is expected to fall as it is realised that the course is a high level and demanding one and only those with the right skills will be able to succeed.
- 46 As discussed above, raising entry requirements for the Bar Professional Training Course will doubtless raise the standards on the course and of the students graduating from the Course and subsequently undertaking pupillages and following into practice. This is likely to increase the strength and effectiveness of the legal profession.

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

- 47 The Bar Standards Board considers that requiring all BPTC applicants to take IELTS would have no effect, adverse or otherwise, on the public understanding of this regulatory objective. It would rather increase public understanding of entry requirements for training and provide additional reassurance.

Promoting and maintaining adherence to the professional principles, including maintaining proper standards of work; and acting in the best interests of clients:

- 48 Promoting excellence and quality within the profession is a vital role of the BSB, as is ensuring that those who qualify as barristers have the right level of skills and knowledge to provide services to the public. This concept underlies the BSB's role in regulating education and training for the Bar. The requisite language skills are fundamental in ensuring the skills and proper standards of work of those who are called to the Bar of England and Wales.

The better regulation principles

Transparency

- 49 The Bar Standards Board has worked hard to be transparent through the entire review and consultation. A great deal of consultation and discussion has taken place, not to mention a major review of the Course, before the conclusion that a universal testing system (for language, reasoning and aptitude skills) was the best way forward. Barristers, academic staff and the students themselves were all consulted and there was wide support for a stricter entry requirement to raise standards on the Course. In addition, consultation on the precise entry requirements continued for one year after the submission of the Wood report in July 2008 until the BPTC Handbook was finalised and published in July 2009. The Handbook as updated for the Academic Year 2010-11 (Annex C) is made widely available on the BSB website: [<http://www.barstandardsboard.org.uk/assets/documents/BPTC%2009-11-10.pdf>].
- 50 Consultation with other ARs on the requirement for all candidates to pass the academic IELTS test at a minimum of 7.5 in all categories will continue. Details will be provided.

- 51 The introduction of a mandatory English language test is particularly relevant to the Solicitors' profession as well. The BSB has therefore consulted and met with the Law Society, who expressed support for English Language entry testing and the eventual use of an Aptitude Test. We understand that the SRA aims to introduce IELTS testing for students undergoing professional training as solicitors, and is also exploring the possibility of an Aptitude test.

Accountability

- 52 As the regulator for the Bar, the Bar Standards Board is accountable for the changes it implements. The Board has a wide range of plans to ensure that it remains accountable for the decision that it has taken to introduce a mandatory English language test. These include:
- a. A programme of monitoring visits takes place every year to all Providers; from September 2011, during these visits, panels will be briefed to ensure that they address what effects the changes have had when talking to students, staff and management. Any issues will be written up in the reports of the visits and will be addressed when the annual monitoring report is written.
 - b. The BSB employs External Examiners to assist with Quality Assurance by visiting individual Providers and attending examination boards. From 2011, all External Examiners will be briefed to ensure that they particularly address the issue of any changes which have occurred due to the raising of the entry requirements, and ensure that they include any observations in their report for consideration by the Bar Standards Board.
 - c. The Bar Standards Board conducted a Student Perception of Course Survey in 2008 and 2010, and plans to do so on a yearly basis from now on. There is currently a question on the survey asking whether the student's experience was affected by the presence of weak students on the Course. This can be expanded to ask more questions on this theme in order to get a good view of students' opinions in relation to this following the rule change, the results of which can then be compared with previous responses to this question.
 - d. To check that the rule change is in fact having the desired effect, the BSB will ensure that comparisons are made between results following the rule change and those from previous years, as there will inevitably be fewer students on the Course with poor English skills, and the assumption will be that the overall cohort will perform better on the Bar Course.

Proportionality

- 53 As demonstrated above, the BSB carried out a thorough and careful review, with extensive consultation before determining the need for English language testing on the BVC/BPTC. The conclusion reached was that some form of universal entry test was the only suitable way to ensure a fair and proportionate approach to selection of suitable candidates for the BVC/BPTC. It is vital that minimum standards for entry to the course are set and monitored; particularly given the evidence over the years that self-regulation has not been sufficient to resolve the problem. Notwithstanding the expense of the course, the evidence shows that students with insufficient language ability still seek to do the Course.

Consistency

- 54 The BSB believes that a requirement for all applicants for the BVC/BPTC to demonstrate a minimum level of English language proficiency by means of an approved language test is by far the best method of ensuring that there is consistency and fairness in the selection and admissions process for the Course. It is not possible for the BSB to consider the language skills of all individual applicants (of which there are approximately 3,000 every year). It would be far more difficult for the BSB to ensure the application of a consistent standard to all students who would all use the tried and tested IELTS system. Use of the IELTS (or other recognised equivalent) is a far more effective means of ensuring that students have the necessary language skills and that a consistent approach is adopted towards all students.

Targeting

- 55 The BSB considers that this is the appropriate stage of training to target the requirement for many reasons. It must take place prior to entry. The course is so expensive that it would be inappropriate for students to undertake the test after entry. It would be very difficult to require IELTS to be completed long before the Course (e.g. before commencing a law degree) since this may be several years in advance and the test, and language skills themselves, lose currency. Once students are on the course, its duration and the level of work required allows very little opportunity for remedial teaching to allow students to bring their language skills to the required level.
- 56 The BPTC Sub Committee and Wood Working Group agreed that 7.5 IELTS (or identified equivalent) is the correct minimum standard for the Course after discussing the test with the organisers and inspecting example student responses to the different sections of the test (see descriptors, above paragraph 16). It should also be noted again here that 7.5 IELTS is a standard score required by a vast majority of Universities for postgraduate courses, especially legal courses (see Annex J). Lastly the Committee felt that a degree from an English University cannot always satisfy the English language requirement, as a degree tests academic rather than language skills.

Desired outcome

- 57 The desired outcome from implementing IELTS testing for all would be the improvement of standards on entry, and therefore exit of the BPTC. By using a test universally we will be able systematically to identify students with poor language skills and they will be prevented from undertaking the Course until such time as their English skills have improved to the required standard.
- 58 The proposed alteration is expected to increase student satisfaction on the BPTC as students with weak English language will not be on the Course to risk affecting other students' experience. This will be checked by speaking to students during 'pastoral' (one day) visits, encouraging our External Examiners to do the same and comparing the results of the Student Perception of Course Survey from previous years with those in subsequent years, after the rule change.
- 59 It is expected that overall marks on the BPTC will be slightly higher than they are now as evidence suggests that students with poor language skills invariably do less well on the Course. This will be checked by comparing the scores and statistics some years after the rule change with those from some years previous. The new BPTC is (as with the previous BVC) carefully monitored annually by means of scrutiny of the Annual Monitoring reports, by Providers, by annual visits to each provider/site by the BSB and by obtaining feedback from students through discussions and

questionnaires/surveys. A review, consisting of the cumulative feedback and findings of annual monitoring is intended to be carried out after 3 years of the new course and requirements. The effects of the IELTS test in raising the standards on the course, improving the learning experience of successful students, and increasing the quality of graduates is anticipated and would be shown by results and feedback from various stakeholders

- 60 It is expected that the implementation of this proposed rule change will also assist the Legal Services Board in achieving their Regulatory Objectives due to the reasons outlined earlier in this report.

Other regulators

- 61 The proposed alteration is likely to affect the Solicitors Regulation Authority (SRA) and therefore they have been consulted in relation to this application. The SRA may be affected as there is a chance that some students with poor language skills will wish to undertake a Legal Practice Course instead of a BPTC following the rule change as the requirement does not exist for the LPC. The SRA and the Law Society have confirmed support for an IELTS requirement and have expressed interest in implementing a similar entry requirement for their own vocational course (LPC).
- 62 Due to the fact that the introduction of IELTS for all students on the BPTC is likely to improve the standards of those graduating from the course and entering into practice, the SRA and Institute of Legal Executives are likely to notice a positive effect in that Barristers transferring across professions will have a proven good command of the English language. Any problems relating to transfers would be avoided if the SRA introduces a similar entry requirement; which would also promote consistency and confidence across the profession. The Bar Transfer Test (BTT) does not include a specific language component but it does involve live advocacy assessments at a high level which of course demand a very high level of English language skills. Since the BTT is taken by *qualified* transferring lawyers (transferring solicitors or qualified persons from overseas, especially the EU), there are different issues involved, compared with students. The BSB therefore does not currently propose the introduction of a compulsory IELTS test for transferring qualified lawyers, undertaking the Bar Transfer Test. Rather, each person is considered individually on merit for the test (there are some 80 applicants for the Bar Transfer Test each year).
- 63 Existing requirements have been published on the BSB website and this application will be circulated to the other Approved Regulators at the same time as the application is submitted to the LSB.

Date of implementation

- 64 Students will be able to commence applying for the BPTC to start in September 2012 from October 2011. We would like to have the rule change implemented so that all students starting the Course in September 2012 will have completed an IELTS test to the required standard. To this end, ideally we would like the rule to be approved as soon as possible, so it can be advertised and implemented before the online application system for 2012 opens in October 2011. Students can then apply and complete an IELTS test as part of the application process.
- 65 It was earlier suggested that this application should be made in time to be a requirement for those applying in October 2010 to start in September 2011. However, after receipt of comments from the LSB on an earlier draft, 9 August 2010, this timescale was not possible. All those comments have now been addressed within

this application. This has resulted in a further year of lead-in time becoming involved, meaning that the BSB has to continue to deal with the problems and possible discrimination that have been occurring with the current regime.

Consultation Processes Undertaken

- 66 Details of consultation processes and/or results can be found at Annex F (Wood Report), Annex D (consultation with Providers) and Annex G (compilation of comments). Notice of this application is to be published on the BSB website with comment invited. We will be happy to provide further information as it is available.
- 67 Further information on consultation processes are included above. Opposition was previously raised by the OFT to the proposals for an Aptitude Test but they have not made any submissions with regard to English Language testing. Correspondence with those who have challenged the BSB's previous policy and suggested that the BSB should have a universal policy is included at Annex G.].
- 68 The BSB continues to review the impact of the existing requirement (that candidates whose first language is not English must demonstrate a minimum IELTS 7.5 standard), by considering pass rates in summer 2010 and subsequent years compared with previous years. This can be done once we obtain Annual Monitoring Reports and statistics from the Providers (due December each year). The BSB will continue to review the entry qualifications of applicants as against pass rates in the event of the IELTS-for-all requirement being implemented. This will be carried out by analysis of student data and pass rates, as notified by Providers.

First draft April 2010

Revised June – December 2010.

This final version 14 January 2011

Other explanatory material

The following supporting material is attached:

- Annex A Bar Training Regulations (BTRs)
- Annex B Course Specification Requirements and Guidance (Golden Book) 2009-10
- Annex C Course Specification Requirements and Guidance (Blue Book) from 2010
- Annex D Responses to consultation on requiring IELTS 7.5 for those whose first language is not English
- Annex E Proposed new IELTS Rule for all BPTC applicants
- Annex F Report of the BVC Review Working Group 2008 (Wood Report)
- Annex G Compilation of comments from Providers, students, visitors, External Examiners and minutes
- Annex H Examples of applications for candidates with poor English Language skills
- Annex I Impact assessment on policy of requiring 7.5 IELTS for all applicants
- Annex J IELTS level descriptors
- Annex K IELTS requirements for post graduate courses