

Direction 156 issued under Part 3 of Schedule 4 to the Legal Services Act 2007 to the Bar Standards Board (BSB)

1. This is a direction issued pursuant to paragraph 19(3) of Schedule 4 of the Legal Services Act 2007 (the “Act”).
2. Unless stated otherwise, words in this direction are used as they are defined in the Act.
3. In accordance with paragraph 19(3) of Schedule 4 to the Act, the Legal Services Board has directed that the following alterations by the BSB to its regulatory arrangements be treated as exempt alterations for the purposes of paragraph 19(2)(c) of Schedule 4:

Amendments to five parts of the BSB Handbook to comply with the LSB’s Internal Governance Rules 2019 (IGR) and to clarify existing practices. The amendments concern the following parts of the BSB Handbook:

- Part 1 – Introduction
- Part 2 – The Code of Conduct
- Part 3 – Scope of Practice and Authorisation and Licensing Rules
- Part 5 – Enforcement Regulations
- Part 6 – Definitions

Proposed changes

4. The BSB is proposing a number of amendments to the BSB Handbook. The majority of the proposed changes are made for the BSB to comply with the IGR and in this respect, the proposed changes replace references to ‘the Bar Council’ and ‘the Bar Council (acting by the Bar Standards Board)’ with ‘the Bar Standards Board’. This is to clarify that regulatory functions sit with the BSB. Some other minor amendments are also proposed, which the BSB states are aimed at clarifying existing regulatory policy and practice.
5. There are a few areas of the Handbook where the BSB proposes to retain some references to the Bar Council. This is where removing references to the Bar Council is unnecessary for compliance with the IGR and where, according to the BSB, there is also a strong public interest justification (in accordance with the regulatory objectives) for retaining the references.

IGR specific changes

Part	Rule(s)/Definition	Nature of change
Part 1 – Introduction	r17.2	Reference to ‘the Bar Council’ has been replaced with ‘the Bar Standards Board’. This is to clarify that the BSB, not the Bar Council, registers European lawyers in accordance with the Establishment Directive.
Part 2 – The Code of Conduct	rC70, rC120.1, rC.121	Reference to ‘the Bar Council’ in rC70 and reference to ‘the Bar Council (acting as Bar Standards Board)’ in rC120.1 and rC.121 have been replaced with ‘the Bar Standards Board’. The amendment to rC70 is to clarify that only the BSB

		and not the Bar Council, requires access to inspect the premises and records of those regulated by the BSB. The amendments to rC120.1 and rC121 are to reflect that it is the BSB that registers barristers as Public Access practitioners.
Part 3 – Scope of Practice and Authorisation and Licensing Rules	rS9.4, rS48.1, rS48.2, rS49.1, rS50, rS51, rS52, rS53, rS57, rS58, rS59, rS60, rS69, rS70.2, rS71, rS72, rS73, rS74, rS75, rS76, rS77, rS124.1	References to ‘the Bar Council (acting as the Bar Standards Board)’ have been replaced with ‘the Bar Standards Board’. This is to reflect that the authorisation to practise process and the issue, amendment, endorsement and revocation of practising certificates and litigation extensions are regulatory functions undertaken by the BSB.
	rS15.3	References to ‘the Bar Council (acting by the Bar Standards Board)’ are replaced with ‘the Bar Standards Board’. This is to clarify that the BSB, not the Bar Council, registers barristers who make use of transitional arrangements.
	rS48.3, rS50, rS56, rS59.2	References to the Bar Council have been added. This is to reflect that responsibility for the collection of the practising certificate fee remains with the Bar Council which is consistent with the Act, and both the IGR and the LSB’s Practising Fee Rules 2016.
	rS49.3, rS50, rS55, rS56, rS58.3, rS59.2, rS70.2.c	References to ‘the Bar Council (acting as the Bar Standards Board)’ and the ‘Bar Council’ within these Rules have been replaced with ‘the Bar Standards Board’. This is to reflect that the BSB, not the Bar Council, is responsible for the collection of litigation extension fees. This amendment clarifies existing practice.
	rS61.5	Reference to ‘the Bar Council’ has been replaced with the ‘the Bar Standards Board’. This is to clarify that it is the BSB that registers barristers as Public Access practitioners.
	rS82	Reference to ‘the Bar Council as Approved Regulator or licensing authority’ has been replaced with ‘the Bar Standards Board’. This is to clarify that where an authorisation or a licence is granted to a BSB entity, it is the BSB that undertakes this activity.
Part 5 – Enforcement Regulations	rE241, rE242	References to ‘the Bar Council’ have been replaced with ‘the Bar Standards Board’. This is to clarify that only the BSB, and not the Bar Council, is responsible for taking the appropriate steps to put the findings and/or sanctions of a Disciplinary Tribunal into effect.
Part 6 – Definitions	Bar Standards Board	Definition of ‘Bar Standards Board’ has been amended from “the board established to exercise and oversee the regulatory functions of the Bar Council” to “the part of the Bar Council established to independently exercise the regulatory functions of the Bar Council”. This is for consistency with Bar Council Constitution, as amended to comply with the IGR.

	Practising Certificate	Definition of 'practising certificate' has been amended by replacing a reference to 'the Bar Council' with 'the Bar Standards Board or the Bar Council (acting by the Bar Standards Board)'. This amendment is made to clarify that the issue of a practising certificate is undertaken by the BSB. However, the reference to the 'the Bar Council (acting by the Bar Standards Board)' is included to ensure that the BSB is still able to take relevant enforcement action where practising certificates were issued under the previous formulation (which ended in March 2012). Retaining the reference to the Bar Council does not enable the Bar Council to undertake any regulatory functions
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Other clarifications to the BSB Handbook

Part	Rule(s)/Definition	Nature of change
Part 3 – Scope of Practice and Authorisation and Licensing Rules	rS48.1	<p>This rule is amended to specify that barristers may apply for a practising certificate by completing the relevant form designated by the BSB.</p> <p>The BSB application explains that the authorisation to practise application has historically been completed via a form and more latterly through an online portal, 'MyBar'. The BSB states this amendment seeks to clarify that the use of the online portal is the default method for making such applications. However, the BSB will be clear in its communications that it will accept applications in other formats if it needs to make reasonable adjustments under the Equality Act 2010 for those unable to access MyBar.</p>
	rS72, rS75	References to the Visitors of the Inns of Court have been removed from rS72 and rS75, as there are no further cases to be determined by the Visitors.
	Professional Client	Definition of 'professional client' has been amended to replace a reference to 'the Bar Council or Bar Standards Board' with 'the Bar Standards Board' for clarity.
	Registered European Lawyer	Definition of 'registered European lawyer' has been amended to clarify that the BSB, not the Bar Council, registers European lawyers in accordance with the Establishment Directive. However, a reference to the Bar Council is retained to ensure that the BSB is still able to take relevant enforcement action in rare cases where European lawyers registered with the Bar Council prior to the establishment of the BSB in 2006, and are still in practice as such. Retaining the reference to the Bar Council does not enable the Bar Council to undertake any regulatory functions.

Reason for exemption direction

6. The LSB has considered the proposed alterations against our Significance, Impact and Risk Assessment Framework (“SIR Framework”) and is satisfied that, in accordance with the SIR, the proposed alterations are suitable for exemption.
7. The proposed amendments to the BSB Handbook do not represent a substantial change in regulatory policy or approach. They are drafting changes made for the BSB to comply with the IGR and other minor alterations designed to provide further clarity in the Handbook.
8. This direction is limited to the approval of amendments made by the BSB to its Handbook. It does not cover the BSB’s wider compliance with the IGRs.
9. A copy of the alteration was submitted to the Board on 30 June 2020.
10. This direction is to be deemed made on and to be effective from 22 July 2020.

For and on behalf of the Legal Services Board

22 July 2020