Information requirements: application by approved regulators for approval by the LSB of alterations to their regulation arrangements under Part 3 of Schedule 4 to the Legal Services Act 2007 (the Act)

Summary

An application by an approved regulator for approval by the LSB of alterations to their regulatory arrangements under Part 3 of Schedule 4 to the Act must include the information set out in this proforma, which summarises the requirements for applications under the Part E of the Application to Alter Regulatory Arrangements Rules 2021.[1]

Use of this proforma for making applications is optional to assist applicant approved regulators.

An approved regulator must comply with the Rules and have regard to the Guidance in applying to the LSB. In case of conflict between the Rules, Guidance and the Act, the provisions of the Act prevail.

As set out in paragraph 94 of the Guidance, the LSB may provide informal feedback on some proposals before an application is submitted.

The approved regulator submitting an application takes responsibility for the accuracy and completeness of the information provided.

On receipt of an application, the LSB will acknowledge receipt and confirm to the approved regulator in writing the end date for the initial decision period of 28 days, subject to any extension by consent or notice, or as a consequence of a warning notice given by the LSB. The LSB will notify the approved regulator of its decision pursuant to paragraph 25(6) of Schedule 4 to the Act and publish that notice on its website.

[1] The information requirements in Part E of the Regulations are summarised here.

Publication

We publish all applications on our website, along with any extension notice, warning notice and the decision notice once made.

Ordinarily we publish third party correspondence received on applications with personal data redacted unless a request is made to keep it confidential.

Confidential or commercially sensitive information

If any information submitted as part of the application is considered by the approved regulator to be confidential or commercially sensitive, please state this in the cover email or letter which accompanies the application and provide reasons as to why the information in question should not be published.

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III. Alterations
    a. Full details and explanation of each alteration. This includes a schedule of changes, a track change word document or any other method the approved regulator considers appropriate.
    b. Rationale, intent, purpose, and effect of each alteration, including detail on any defect in the regulation of regulated persons that will be remedied by the alteration.
    c. Details on how and when the alterations will be implemented.
    d. An assessment of whether the alterations impact on the regulation of regulated persons by another approved regulator or approved regulators, and where there is impact details of consultation with the affected approved regulator, any regulatory conflict and how it will be resolved as is reasonably practicable.
    e. The above applies to any conflict with an external regulatory body – and include measures as is reasonably practicable and appropriate in the circumstances to prevent unnecessary duplication of regulatory provisions.
IV. Consultation and Engagement: Information on the consultation/engagement undertaken by the approved regulator when developing the proposals. This must include information on the approved regulator's consideration of any responses to the consultation, any consequential changes made to the alterations, and an explanation of why the approach to consultation and engagement was proportionate in the circumstances.
V. Impact Assessment: An assessment of the impact of the alterations on persons with protected characteristics as defined by section 4 of the Equality Act 2010 along with details of any measures to mitigate any adverse impacts and why any remaining adverse impact is proportionate, reasonable and not prejudicial to the regulatory objectives overall. To include details on how the alterations advance equality of opportunity between persons who share protected characteristics and persons who do not, and on how the alterations support the aim of dismantle barriers to a diverse and inclusive profession where relevant.
VI. An assessment of the impact of the alterations on the conduct of legal services by regulated persons, consumers and the public interest, along with details of measures to mitigate any adverse impacts. Where adverse impact remains, explain why this is

proportionate, reasonable and will not be prejudicial to the regulatory objectives overall. If significant alterations to the regulatory framework is proposed, an approved regulator must undertake a proportionately more detailed assessment of the potential impact on the regulated persons, consumers and the public interest.

VII. Information on the evaluation and monitoring the approved regulator will undertake of the impact of the alterations once they have been implemented.

VIII. Any draft guide or policy that will support implementation of the alterations.

The minimum level of information we expect from approved regulators is set out above. However, additional information may be provided, for example by reference to the Guidance. The LSB may also request further information.

Submission

We would prefer to receive applications electronically, but hard copy applications are also welcome. Applications should be sent to:

Email: schedule4approvals@legalservicesboard.org.uk

Posted applications should be sent to:

Legal Services Board
3rd floor, The Rookery
2 Dyott Street
London
WC1A 1DE

Information required in an application

I. Summary and overview

Briefly summarise the application

1. Approval of this application for alterations to regulatory arrangements will help the BSB modernise the delivery of our enforcement function, to ensure it is quick, effective and responsive, whilst also preserving the high quality of our decisions. It follows a significant redesign of our end-to-end enforcement process and review of the regulations that underpin it. Our application will also help us implement recommendations arising from an independent review of our enforcement function, undertaken by law firm Fieldfisher LLP.[2] The voluntary undertakings agreed between the BSB and the LSB provide for "new enforcement regulations by January 2027". The alterations are also a vehicle to implement a number of the recommendations of the Harman Review.

2. Much of our modernisation has already occurred via process improvements and the restructuring of teams within the BSB. However, elements of modernisation require alterations to the BSB's regulatory arrangements, for which LSB approval is required. In particular, we plan to extensively alter "Part 5" of the BSB Handbook, and associated guidance, to produce a set of regulations that:
   - include sufficient and appropriate powers to address relevant behaviours;
   - contribute to improving timeliness of the enforcement processes;
   - are better organised, simplified and expressed using plain English;
   - are accompanied by relevant supporting documentation; and
   - are communicated effectively both internally and externally.

3. This application and supporting documents summarise our proposed alterations to our enforcement-related regulatory arrangements. This application focuses on the key thematic, policy and process changes, also citing key regulatory arrangements that will change. In addition to the revised transitional provisions and Enforcement Regulations (Annex A), the accompanying spreadsheet (Annex B) provides more granular detail of how the changes are enacted – showing, line by line, how our new regulations map onto, or depart from, our legacy Part 5 Handbook regulations.

4. Our proposed alterations take account of the outcomes of two public consultations; one undertaken in July 2025[3] and a second in May 2026[4]. Both consultations are available online and are also attached in Annexes C and E. The first consultation set out 34 proposals, each focusing on a specific issue, across four subsections of Part 5 of our Handbook. The second consultation made five additional proposals that arose during the review. It also sought feedback on our proposed draft Enforcement Regulations (including updated Definitions in Part 6 of the Handbook), which seek to implement all of the proposals that we are taking forward.

[2] Fieldfisher. Bar Standards Enforcement Review. April 2024. Available here.
[3] Available here.
[4] Available here.

5. This application, and the changes to our regulatory arrangements proposed in it, is an important step in our commitment to improve the timeliness and efficiency of the enforcement process, in accordance with our voluntary undertakings to the LSB[5].

6. In both the development of our proposals and also the preparations for implementation, we have worked closely with the Bar Tribunals and Adjudication Service (BTAS) – a key partner in the delivery of the Tribunal process. BTAS are committed to a shared objective of modernising the enforcement processes and are investing in developing and updating their own policies and procedures, adding resource and agreeing updated KPIs with the BSB.

7. Both BSB and BTAS are working to an implementation date of 1 February 2027. We are updating policies and procedures, preparing training and communications plans for that date.

II. Regulatory objectives and better regulation principles (rule 9)

Provide details on the impact of the proposals on the regulatory objectives, including assessment of potential benefits and detriments against those objectives, having regard to the better regulation principles. Where there are negative impacts, how the alterations nonetheless comply with and thus promote the regulatory objectives overall and are in the public interest. Please focus on those regulatory objectives that are meaningfully engaged by the proposals.

8. Below, we briefly summarise where the 39 thematic changes to our regulatory arrangements most meaningfully engage with our regulatory objectives. We also signpost where the changes are likely to have a positive / negative impact on our regulatory objectives.

Regulatory Objectives (Legal Services Act)	**Impact of the alteration on Regulatory Objectives**
RO1: Protecting and promoting public interest	Our Handbook changes significantly engage with this regulatory objective. In particular, our proposals are intended to enhance public confidence in the regulatory system – specifically, our enforcement regime. The proposals are intended to advance the interests of society as a whole; not just those who submit reports about barristers, but also other stakeholders such as witnesses, members of the public and barristers involved in the process. We set out how below.
RO2: Supporting the constitutional principle of the rule of law	These reforms do not meaningfully engage with this regulatory objective. However, our alterations are designed to operate in keeping with several of the rule of law's components, as commonly understood. By redrafting our regulatory arrangements in plain English, we aim to make them more accessible, intelligible and clear.

[5] Available here.

	Our intention is to update our enforcement processes in a way that leads to efficient and effective procedures and transparent outcomes.
RO3: Improving access to justice	Our reforms indirectly and positively engage with this regulatory objective. As set out above, the reforms are intended to protect and promote the public interest and enhance public confidence in the regulatory system. We consider that this will ultimately support consumers' experience of access to justice, including witnesses involved in the disciplinary process.
RO4: Protecting and promoting the interests of consumers	Our Handbook changes significantly and positively engage with this regulatory objective. In addition to creating a more efficient and quicker enforcement regime, our changes protect and promote consumer interests in several additional ways. These include enhanced powers to impose interim suspensions and practice conditions for the protection of the public and enhanced transparency over the outcomes of investigations. The measures also support action to implement recommendations of the Harman Review. Further details are set out below.
RO5: Promoting competition in the provision of legal services	These reforms do not meaningfully engage with this regulatory objective.
RO6: Encouraging an independent, strong, diverse and effective legal profession	Our Handbook changes positively engage with this regulatory objective. Improving efficiency and reducing the cost of investigations should benefit barristers who are involved in the process, who disproportionately tend to have specific protected characteristics. Some of our planned alterations are also intended to improve the experiences of witnesses, who may be vulnerable. Our new Health Panel and Procedure Regulations are specifically intended to modernise and improve our approach in relation to barristers with health conditions that are impairing their ability to practise. As set out in the Equality Impact Assessments (EIAs) which accompany these proposals, some of our proposals could result in a potential detrimental impact on barristers by reference to their protected characteristics. For various specific proposals, we summarise the steps taken to remove those barriers, mitigate impacts or better advance equality below. More extensive details are set out in the EIAs, which are annexed at Annex G.
RO7: Increasing public understanding of the citizen's legal rights and duties	These reforms do not meaningfully engage with this regulatory objective. However, we have sought to ensure our enforcement regulations and processes are updated in a manner that is clear and

	accessible, and can help improve consumer knowledge and understanding of how the enforcement process works.
RO8: Promoting and maintaining adherence to the professional principles	Our Handbook changes significantly and positively engage with this regulatory objective. Our revised (and current) enforcement regulations are the mechanism by which we take enforcement action against barristers who are allegedly not acting in adherence with the professional principles.
RO9: Promoting the prevention and detection of economic crime	These reforms do not meaningfully engage with this regulatory objective.

Better Regulation Principles

9. The proposed alterations to the Enforcement Regulations have been designed to align with the better regulation Principles, fostering a regulatory framework that is both effective and fair while maintaining public confidence and professional standards.

10. ***Transparent:*** We completed two public consultations on our proposals, focusing on the underlying policy rationale for the proposals and the drafting of the regulations themselves. We also ran a series of engagement events to secure views from a Stakeholder Reference Group, comprising members of the profession, representative bodies and consumer groups. Following both consultations, we have published statements on the stakeholder feedback received and our policy positions, as well as our proposed final draft regulations. Once approved, we will publish the new regulations, plus relevant supporting policy documents, to assist how the regulations should be applied in practice. We have also published our proposed final draft changes during the period of LSB review, to give the profession advanced sight of the planned forthcoming changes.

11. As part of our annual reporting, we will continue to publish data on the BSB's regulatory casework and performance data and trends and ensure they are widely disseminated to the profession and key stakeholders to improve sector-wide understanding of the BSB's enforcement processes. We are working with BTAS on a revised set of agreed KPIs, which will be published in 2027.

12. Several of our proposals also seek to improve transparency in the enforcement process, e.g. through the earlier publication of disciplinary cases and the publication of outcomes in all cases, and non-party access to documents.

13. ***Accountable*:** We supported our public consultation with engagement activities, consulting a Stakeholder Reference Group in the development of our proposals and speaking to professional and representative bodies. We considered all feedback received, which is set out in the published consultation responses.

14. In addition, the BSB will continue to report publicly on its regulatory casework data, equality and diversity monitoring data as well as its overall performance and impact as a regulator annually. Further, we will evaluate the impact of the changes to ensure accountability in implementation, once the changes have bedded in and we have collected enough data to undertake the analysis and evaluation.

15. ***Proportionate:*** We believe the changes will lead to more proportionate regulation by bringing the BSB's Enforcement Regulations up-to-date and ensuring it remains relevant to modern regulatory practice. The overall objective of this work is to develop a set of Enforcement Regulations that help improve the efficiency and timeliness of the end-to-end enforcement process, while maintaining quality, respecting the balance of obligations between the BSB and respondent barristers, and enhancing public trust and confidence in the profession and in our regulation of it.

16. A common theme of our proposals is that they take a more proportionate approach to managing the enforcement process, stripping out unnecessary steps and empowering decision-makers to take more proportionate and targeted regulatory action, reflecting our commitment to improving efficiency and reducing delays. One of the key changes to the BSB's Disciplinary Tribunals Regulations (DTRs), for example, is the introduction of an overriding objective that Disciplinary Tribunal (DT) cases should be dealt with 'justly and proportionately', including dealing with cases in ways which are proportionate to the nature, importance and complexity of cases, which imposes an express obligation to consider proportionality and promote efficiency and fairness in each case before the DT.

17. ***Consistent:*** Our reforms are informed by comparative research, which has significantly informed our approach. For example, our new approach for publication of a summary of charges (proposals 32) is informed by the approach of the Solicitors Regulatory Authority (SRA) and also the approach taken by the criminal law more generally. Separately, our proposals to introduce three-person IDB panels is informed by the experiences of other regulators (SRA, General Medical Council, Social Work England, etc.) and strikes a balance between ensuring panels are efficient, credible and legally rigorous, while also maintaining appropriate lay input, as a public interest regulator.

18. ***Targeted:*** As can be seen from our public consultations (see Annexes C to F), each proposal for change is targeted at specific, explicit outcomes or aims to address issues that have been identified through our learning and practical experience. The changes align with our evidence base and experience, with many being informed by the recommendations from an independent review of our enforcement system by Fieldfisher LLP as well as the Independent Review of Bullying, Harassment at the Bar (the Harman Review). See also our EIAs at Annex G.

III. Alterations detail of each proposed alteration (rule 10)

This must provide full details on, and explanation of each alteration, including any regulatory arrangements they will amend. This can include a schedule of changes, a track change word document or any other method the approved regulator considers appropriate.

Details must include: (a) the rationale, intent, purpose, and effect of each alteration; (b) if applicable, the gap or defect in existing regulatory arrangements that the alteration is intended to remedy; (c) how and when the alterations will be implemented; (d) assessment of whether the alterations impact on the regulation of regulated persons by another approved regulator or approved regulators, and where there is impact details of consultation with the affected approved regulator(s), any regulatory conflict and how it will be resolved; and (e) the details in (d) applies to any conflict with an external regulatory body and include measures to prevent unnecessary duplication of regulatory provisions.

(a) Rationale, intent, purpose, and effect of proposed alterations

This section should include information and evidence setting out:
why the approved regulator is making the alteration or alterations.
what defects are intended to be remedied.
what the intent, purpose and effect of the alteration or alterations will be.
what impact the proposals are anticipated to have on the regulatory objectives.

(b) The gap or defect in existing regulatory arrangements that the alteration is intended to remedy

19. Below, we briefly summarise the rationale, intent, purpose and proposed effect of each alteration for each of the thematic proposals we ultimately decided to pursue following our two public consultations. Additional details regarding each proposal (including how the proposals evolved) are available in our consultation documents. These documents are available online and also in Annexes C and E. Further details can also be found in our response documents (feedback statements) to the consultation, where we further highlight where we have modified proposals in light of feedback received. These documents can be found online and in Annex D and F.

20. For each proposal, we also indicate where in the Handbook / accompanying guidance each alteration will occur, and its equivalent current (soon legacy) Handbook / guidance provisions.

21. Several of our alterations have a particularly strong engagement with our regulatory objectives / better regulation principles, or other LSB expectations on approved regulators (i.e. statements of policy). These are also briefly signposted below.

22. Our proposed Handbook changes often refer to an “applicable person”, which is an existing BSB concept within the BSB Handbook. Applicable persons are unregistered barristers or BSB regulated persons (including practising barristers) who were, at the time of the conduct complained about, BSB regulated persons and therefore subject to BSB oversight – even if they have subsequently been suspended or disqualified etc. The changes are also intended to improve the experience of justice and provide greater support to members of the public who may be witnesses or otherwise engaged in the process, e.g. in the giving of evidence or witness anonymity, and the publication of outcomes.

23. The proposed Handbook changes are set out thematically below, broadly in line with how an enforcement case is pursued end-to-end. However, to allow for easy cross-referencing to the original sources, individual change proposals are headlined by reference to the first (and, where relevant, the second) consultation.

Transitional provisions (Proposal 1 of second consultation)

Rationale, intent, purpose and effect

24. We propose that the new regulations will come into force on or around 1 February 2027 and will apply to any cases that are ongoing by that time. Any step taken prior to the new regulations coming into force will be treated as having been taken under the equivalent provisions of the new regulations. We have introduced draft transitional provisions in each set of regulations to ensure a consistent approach across the BSB's processes, including disciplinary action, enforcement decisions, interim orders and health procedures.

25. As a result of this proposal, we will need to make consequential amendments to the existing transitional provisions in Part 1 of the Handbook. We intend to preserve the existing position in relation to pre-2014 conduct and the standard of proof so that the same approach as under the current regulations will continue to apply (see rI14).

26. However, notwithstanding the general position regarding the commencement date for the new regulations, in response to feedback following our second consultation, we propose to proceed with the earlier publication of disciplinary charges (see Proposal 32 below) only for those cases that have not yet had a first case management hearing or case management directions set. For cases that are already proceeding beyond the directions stage, publication will continue to occur when the convening order is issued, in accordance with the current approach.

27. In addition to the limited exception to the publication provisions set out above, we propose a further, narrow exception to the transitional provisions for cases where a Convening Order has been issued, (following the listing of a hearing) on or before 31 January 2027. In these cases, the current regulations will continue to apply. As these cases with imminent hearings can proceed under the existing framework, there will be greater certainty for parties who have prepared their cases relying on the existing regulations. It will also avoid Tribunal panel members having to undertake additional preparation, training and support to apply the new regulations at short notice. It will also allow sufficient time for the necessary operational arrangements, training and support to be put in place for the revised regulations to be implemented in practice. As Convening Orders are usually issued a few weeks (and at least 14 days) before the hearing, the number of cases to fall within this exception will be limited.

Gaps / defects to be remedied

28. Importantly, we do not intend to create a parallel approach to the application of the revised regulations. Subject to the limited exceptions, the revised regulations will apply to all cases from the commencement date (i.e. 1 February 2027), including cases already underway.

Introducing the new regulations with a fixed launch date will ensure that they apply consistently to all cases being considered by the BSB or already in the system. This approach will promote clarity and avoid the complexity of operating different regulatory frameworks at the same time. In our view, the primary benefit of this approach is that it will avoid unnecessary confusion and promote understanding for barristers, their representatives, and the wider public.

Current Handbook **regime:** Part 1, rI14

New Handbook regime: Part 1, rI14 and Regulation 1 of each of the Enforcement Regulations

Regulatory objectives / PSED / better regulation principles engaged:

29. By updating the commencement and transitional provisions, the application of and requirements under the new Enforcement Regulations are clear and transparent. They will also be applied consistently to all disciplinary cases from 1 February 2027 onwards (save in relation to the earlier publication of disciplinary charges and for cases where the convening order has been issued on or before 31 January 2027 – noted above). This will immediately benefit consumers (including parties and other users, such as witnesses, involved in existing disciplinary proceedings) who would otherwise not benefit from the reforms being introduced (RO4 engaged). Further, our EIA has not identified that this proposal will have any unintended consequences or disproportionate impacts for barristers with protected characteristics.

Part one: the investigation phase

Communication of detailed, written 'allegations' (Proposal 1 of first consultation)

Rationale, intent, purpose and effect

30. In our first consultation, we consulted on a proposal to adjust our then approach to investigations, by deferring the communication of detailed, written allegations of potential breaches of the BSB Handbook to the applicable person at a later stage, once an investigation is more developed. This would allow us to gather more evidence before communicating with the barrister about the allegations.

31. We communicated our decision to implement that change in November 2025 (see our Consultation Feedback Statement for Proposal 1) and are now already doing this within the terms of the current regulations, with positive results. However, our proposed alterations seek to provide greater clarity and appropriate powers to support this part of the investigation phase.

Gaps / defects to be remedied

32. The aim of the change was to reduce delays that arise out of the early-stage informing of applicable persons, to avoid a rigid investigative process, and to allow us to move towards a more open investigative approach. The alterations now sought seek to reflect that

approach more clearly in the regulations.

Current Handbook regime: rE15
New Handbook regime: Regulation 8.2 & 10.1 of the *BSB Enforcement Decision Regulations 2027*

Regulatory objectives / PSED / better regulation principles engaged:

33. This reform maintains the BSB's overall transparency towards applicable persons regarding the nature of the allegations against them, while shifting towards a more proportionate approach when engaging with them. The intended outcome, of facilitating a more open approach to investigations, enhances public confidence in the regulatory system (an attribute of RO1).

Confidentiality of reports and investigations (Proposal 5 of first consultation)

Rationale, intent, purpose and effect

34. We will retain the duty on the BSB to keep confidential any reports or allegations assessed or investigated, as is the case under the current enforcement regulations. However, we will amend the exceptions to this duty to clarify that we can make disclosures to third parties for the purpose of furthering an investigation, whilst aligning this exception with UK GDPR safeguards. In addition, we will also introduce an additional exception to the duty of confidentiality to enable the BSB to disclose information to the recently appointed Commissioner for Conduct, in relation to the referrals they have received.

Gaps / defects to be remedied

35. Clarifying the exceptions to the duty of confidentiality will help align the regulations with existing BSB practices. By introducing express provisions confirming when disclosures may be made (including to the Commissioner for Conduct in cases of bullying, harassment and sexual harassment), we will promote greater clarity, certainty and understanding of when information can be shared by the BSB. This supports the recommendations of the Harman Review.

Current Handbook regime: rE63

New Handbook regime: Regulation 19 of the *BSB Enforcement Decision Regulations 2027*

Regulatory objectives / PSED / better regulation principles engaged:

36. Clarifying the exceptions to confidentiality improves the transparency, consistency and accountability of our existing approach, by clarifying when the BSB is permitted to disclose the existence of a report exists, details in the report or treatment of the report as an allegation or otherwise.

Giving staff the power to refer criminal convictions cases for disciplinary action (Proposal 3 of first consultation)

Rationale, intent, purpose and effect

37. We will broaden BSB staff decision-making powers so that staff have discretionary powers to refer any case involving a criminal conviction directly for disciplinary action, at the conclusion of an investigation. Expanding staff powers in this way provides for a more streamlined and efficient referral process. It will facilitate faster decision-making in cases where the need to a convene a panel to take the referral decision is likely to be unnecessary, given criminal conviction cases are likely to be more evidentially straightforward.

Gaps / defects to be remedied

38. Currently, BSB staff (under delegated authority from the Commissioner) have the power to refer some cases of alleged misconduct directly for disciplinary action (for example, convictions for an offence of dishonesty or certain traffic offences). However, other cases involving a criminal conviction first have to be put to an Independent Decision-making Body (IDB), even though the BSB's policy is that most cases involving criminal convictions will (unless there are exceptional mitigating circumstances) warrant a referral to some form of disciplinary action. By broadening referral powers, we will create a more expedient referral of criminal conviction cases and reduce unnecessary delays and inefficiencies in the existing process.

Current Handbook regime: BSB delegated powers for staff (from the Commissioner). rE19.4, rE22.4.

New Handbook regime: Regulation 12.3 of the *BSB Enforcement Decision Regulations 2027*

Regulatory objectives / PSED / better regulation principles engaged:

39. This change will enhance public confidence in the regulatory system, by streamlining BSB investigations that flow from criminal convictions. Our new approach takes a more proportionate approach to our regulatory enforcement processes. Coupled with our expanded approach to making immediate interim orders, this will benefit future consumers (RO4) who might otherwise make use of the services of barristers that the BSB considers unfit to practice.

40. We do not anticipate this change will have any impact on the number or nature of investigations undertaken by the BSB of those with criminal convictions. Whilst we recognise this proposal could have a disproportionate impact on barristers from minority ethnic groups and men (as they are over-represented in the criminal justice system), this is mitigated by the low risk of these individuals being unjustly impacted. This alteration is therefore unlikely to have any significant equalities impacts on our approach to such investigations.

<u>Introducing a power to "add" and/or "amend" the written allegation (Proposal 2 of first consultation)</u>

Rationale, intent, purpose and effect

41. We will give decision-makers (members of staff or the IDB) a narrow power to add to, or

amend, written allegations, without those revised allegations being resubmitted to an applicable person for further comment. To ensure the applicable person remains aware of the substance of the allegations made against them, we will only exercise this power where any additions or amendments to allegations are aligned with the facts and substance of the original allegations and cause no unfairness.

Gaps / defects to be remedied

42. We will rectify a gap in our current regulations, which do not currently provide any explicit power for decision-makers to add to, or amend, written allegations when considering what, if any, action ought to be taken at the conclusion of an investigation.

Current Handbook regime: rE16 – rE18
New Handbook regime: Regulation 10-11 of the *BSB Enforcement Decision Regulations 2027*

Regulatory objectives / PSED / better regulation principles engaged:

43. This reform maintains the BSB's overall transparency towards applicable persons in communicating the nature of the allegations against them, but in a more proportionate manner than our current approach. The intended outcome, of facilitating a more open approach to investigations, is to enhance public confidence in the regulatory system.

Part two: after a decision is made

Amending the powers to reconsider post-investigation decisions (Proposal 4 of first consultation)

Rationale, intent, purpose and effect

44. We will streamline how IDB Panel decisions can be reconsidered following the conclusion of an investigation where new evidence becomes available or for some other good reason. Currently, when a reconsideration request is received, two decisions from the IDB are required; the first is whether a reconsideration request has merit (i.e. the grounds of review are met), and, if so, the second is to consider the substance of the issue for reconsideration. Where the decision under review involves a referral to a Disciplinary Tribunal, this reconsideration process must occur within a 10-week window, which can be logistically difficult to achieve, particularly given a full IDB panel must be convened.

45. Under our more streamlined approach, a single member of the IDB - the Chair, Vice-Chair or other appointed person– will be empowered to decide whether the grounds for a review are met. The substantive reconsideration decision will continue to be made by a full IDB.

46. Our revised regulations will also clarify the powers of the IDB in relation to a reconsideration decision; for example, by clarifying the IDB's power to make any decision or take any further or different action as they think fit, as if any earlier decision had not been made.

Gaps / defects to be remedied

47. Our Handbook revisions will give effect to the streamlined regime and also clarify the

follow-on powers for the IDBP that arise on a reconsideration.

Current Handbook regime: rE61, rE62.

New Handbook regime: Regulation 18.2- 18.5 of the *BSB Enforcement Decision Regulations 2027*

Regulatory objectives / PSED / better regulation principles engaged:

48. We are mindful of the risks associated with a single IDB member taking making reconsideration decisions and will ensure that all BSB equality and diversity policies are followed and IDB members receive adequate unconscious bias training. Here, the aim is to ensure that this streamlined approach does not result in any disproportionate negative impacts with those with protected characteristics, which cannot be objectively justified.

49. To ensure public confidence in the regulatory system is maintained (RO1) and to encourage consistent regulation, we will develop guidance on the relevant criteria. This will promote consistency and fairness in decision-making.

Part three: matters before the Disciplinary Tribunal

Introducing an overriding objective that cases be dealt with justly and proportionately (Proposal 6 of first consultation)

Rationale, intent, purpose and effect

50. We will introduce an overriding objective to our DTRs to clarify that cases should be dealt with “justly and proportionately”. We will also introduce various additional obligations to give effect to this new approach. This change will implement a key intended outcome of the Enforcement Review, regarding the need to more actively manage cases and ensure they are disposed of justly and expediently.

51. Our Handbook changes will bring our regulatory arrangements into closer alignment with common regulatory practice among other professional regulators and courts and tribunals, for whom overriding objectives are already a feature.

Gaps / defects to be remedied

52. The current Handbook regulations provide that the rules of natural justice apply to disciplinary proceedings, which underlines the need for fairness, and empower the Disciplinary Tribunal Chair or Directions Judge to make, at any stage, such directions as they consider will expedite the just and efficient conduct of the case. However, this Handbook change will go further, requiring cases to be dealt with “justly” and “proportionately”. The alterations will clarify that this means dealing with cases efficiently and expeditiously, “saving expense” and dealing with cases in ways which are proportionate to “the nature, importance and complexity of the issues”. It will empower BTAS, as an administrative body, as well as DTs, Directions Judges and Chairs to ensure cases are actively managed.

53. We will also introduce a new requirement, which mandates that the parties (i.e. the BSB and respondent barristers, including their legal representatives) will be required to help those overseeing the DT to further the overriding objective.

Current Handbook regime: rE165, rE129

New Handbook regime: Regulation 3 of the *BSB Disciplinary Tribunals Regulations 2027*

Regulatory objectives / PSED / better regulation principles engaged:

54. The requirement to ensure that cases are dealt with justly and proportionately is intended to advance equality and overall fairness. The changes also significantly engage with our statutory requirement to regulate in a proportionate manner by requiring cases to be managed in a way that is proportionate to the nature, importance and complexity of the issues.

55. By promoting the fair, efficient and expeditious resolution of disciplinary proceedings, the changes will also improve consumers' experience of accessing justice (RO4). This includes consumers and witnesses involved in disciplinary proceedings, who should benefit from a process that is clearer, more proportionate and avoids unnecessary delay and expense.

<u>Introducing a power for BTAS to regulate its own procedure (Proposal 7 of first consultation)</u>

Rationale, intent, purpose and effect

56. Our Handbook change will give the DT a general power to regulate its own procedures and the cases it oversees, but strictly in accordance with the DTRs and any guidance issued. BTAS manages DT hearings. The change will support fairer, more efficient case management, and allow the Tribunal to adapt its approach to specific circumstances, where necessary.

Gaps / defects to be remedied:

57. The Handbook change will enable BTAS to take on this responsibility.

Current Handbook regime: N/A (new proposal)

New Handbook regime: Regulation 4 of the *BSB Disciplinary Tribunals Regulations 2027*

Regulatory objectives / PSED / better regulation principles engaged:

58. This change encourages a consistent overall approach to the management of DTs, by granting BTAS powers equivalent to that granted to equivalent DT regulatory tribunals, such as the Solicitors Disciplinary Tribunal or Chartered Institute of Legal Executive Regulation's Disciplinary Tribunal. At a more granular level, BTAS will also introduce guidance to ensure consistency in the Tribunal's approach to decision-making.

59. In terms of equality impacts, we are aware that our disciplinary process is statistically higher for barristers who are men, older, or belong to minority ethnic groups. However, the proposal has the potential to introduce greater flexibility to the DT, which may improve overall equality and fairness. To mitigate any potentially adverse impact, such as inconsistent approaches to cases, BTAS will produce guidance to support Tribunals in the exercise of their new powers.

Greater case management by BTAS (Proposal 8 of first consultation)

Rationale, intent, purpose and effect

60. We will introduce greater case management powers and responsibility for BTAS so they are able to set directions for DTs more quickly and actively manage proceedings. The changes are intended to reduce the number of DT cases that fail to meet the six-month target to pass through the DT. The BSB's enforcement review previously observed that, between July 2020 and November 2022, 50% of DT cases took longer than the six-month target and 30% took longer than 12 months.

Gaps / defects to be remedied

61. The Handbook changes will give BTAS responsibility for case management, which will enable cases to be referred for directions by BTAS more quickly, following the decision to refer allegations to a DT.

62. As part of this transfer of responsibility, we will empower BTAS to issue a case management questionnaire for all parties to complete and return within a set time. Upon the expiry of the deadline for the completion of the case management questionnaire, a Directions Judge may then set case management directions, which may include listing hearings to consider interlocutory applications. Here, the intention is that key issues can be raised and resolved, procedural directions given and hearing estimates provided. The proposed regulations will provide a power of delegation so that the function of the Directions Judge can be delegated as appropriate, e.g. to BTAS staff, in relation to the setting of straightforward and uncontested directions.

Current Handbook regime: N/A (new proposal)

New Handbook regime: Regulation 7 of the *BSB Disciplinary Tribunals Regulations 2027*

Regulatory objectives / PSED / better regulation principles engaged:

63. We have no data to suggest that this proposal will have any adverse impact on any particular protected characteristic. As this proposal is primarily concerned with increasing the efficiency of the disciplinary process, we consider that this proposal may introduce positive equality impacts for barristers, including more expedient management of cases. Quicker management of cases provides an indirect benefit to future consumers (RO4), where barristers who are later suspended are prevented from practising in a quicker timeframe than currently.

Clarifying when sanctions come into effect and broadening powers to impose an immediate

sanction, pending appeal (Proposal 9 of first consultation)

Rationale, intent, purpose and effect

64. We will clarify that a DT's decision on sanction will not come into effect until any appeal has concluded or the appeal period has passed (if no appeal is filed).

65. We will also give the DT greater powers to impose an immediate interim suspension or conditions on practise, pending an appeal, where the DT considers that it is necessary for the protection of the public or is otherwise in the public interest. However, we will not alter our current approach to cases of disbarment where the regulations require the DT to impose an immediate suspension or conditions, unless it is inappropriate to do so.

Gaps / defects to be remedied

66. Changing the DTRs to delay the decision on sanction until after the appeal period has ended will regularise and clarify existing BSB practices. Unless an immediate suspension or conditions is ordered, the BSB has previously elected to delay putting into effect any sanction imposed.

67. The powers to impose an immediate suspension or conditions on practice pending an appeal increases the options available to DTs. Currently, regulations only permit such an order being made where the disbarment or suspension terms exceeds 12 months. This threshold will be removed, allowing for more proportionate and targeted regulation in the public interest.

68. As now, barristers will continue to be able to seek to vary any order made, pending an appeal. They will also retain their right to make a substantive appeal against the sanction to the High Court.

Current Handbook regime: rE225 – rE233 (suspension/withdrawal of practising rights pending the hearing of any appeal)

rE239 – rE240 (action to be taken by the Inn (in circumstances where a barrister has been sanctioned to be disbarred)

rE241 (action to be taken by the Bar Standards Board)

New Handbook regime: Regulation 28 of the *BSB Disciplinary Tribunals Regulations 2027* (Findings and sanctions coming into effect); Regulation 30 of the *BSB Disciplinary Tribunals Regulations 2027* (suspension/withdrawal/conditions on practising rights pending the hearing of any appeal).

Regulatory objectives / PSED / better regulation principles engaged:

69. Formalising the BSB's existing approach to delay the date on which sanctions decisions come into effect (until the appeal process is complete) improves the transparency and clarity over our approach.

70. Our enhanced powers to suspend or impose conditions pending an appeal are intended to protect and promote the interests of consumers (RO4) while also enhancing public confidence in the regulatory system. The changes therefore protect and promote the public interest (RO1).

71. Our EIA for this regulatory change indicated that, although statistically barristers with certain protected characteristics may be more likely to be referred to the disciplinary process and receive a sanction, our proposal does not increase this risk. Any adverse impact on barristers with certain protected characteristics is likely to occur at an early point in the enforcement process (a more detailed analysis can be found in our EIA at Annex G).

Representations on sanction: (Proposal 10 of first consultation)

Rationale, intent, purpose and effect

72. We will amend the DTRs to make it clear that both parties have the right to make representations before the DT on the question of sanction, where charges against the barrister are proved.

Gaps / defects to be remedied

73. The change will explicitly grant the BSB the right to be heard on the issue of sanction before the DT decides what sanction to impose. This will prevent future challenges from barristers, who have previously queried the power of DTs to hear the BSB representations before imposing its sanction.

Current Handbook regime: rE204

New Handbook regime: Regulation 27.2 of the *BSB Disciplinary Tribunals Regulations 2027*

Regulatory objectives / PSED / better regulation principles engaged:

74. Granting the BSB the formal right to be heard in sanction decisions will regularise our existing approach, thus improving the transparency of our regulatory system. The reform will protect and promote the interests of consumers (RO4) and also protect and promote the public interest by help ensuring confidence in our regulatory system.

Service by email (Proposal 11 of first consultation)

Rationale, intent, purpose and effect

75. We will amend our regulations to allow service (i.e. delivery of official documents) by email without the prior consent of the barrister, where the barrister's e-mail address is already known to the BSB. At present, the respondent must ask for, or agree, to service by email, unless it is not possible for the BSB to serve them by other means.

76. By permitting the BSB to serve documents on barristers via email, we will avoid the need to have to seek the permission of a barrister or Directions Judge to serve via email, which can at times be abused through the lack of engagement with correspondence seeking permission to serve by email notwithstanding that may have been the primary source of

contact in a case. This can contribute to unnecessary delays, use of resources and overall inefficiencies.

77. Our change is likely to result in service by e-mail becoming the default method of service in most cases. It is also likely to be the most secure source of service because it is less likely to be out-of-date than a postal address.

78. As part of this change, we will provide that documents shall be validly served on the day the email is sent if the email is sent before 4:30pm on a business day. In any other case (including if the email is sent after this time), service will be deemed to have occurred on the next business day. This broadly aligns with similar provisions in the Civil Procedure Rules.

79. To ensure consistency, we plan to adopt the same approach to the service of documents across all of the enforcement regulations.

80. Mindful of our Equality Act 2010 obligations, we will retain the option to serve documents by means other than email – i.e. by post, physically served, other – as may be appropriate in an individual case. We will also ensure that the barristers are aware that email addresses provided may be used for these purposes, and that they can ensure that access to their email account is restricted as required.

Gaps / defects to be remedied

81. This Handbook change will rectify a known problem with service by email, where the respondent's consent to receive service by email is normally required before it can be validly made.

Current Handbook regime: rE249.2

New Handbook regime: Regulation 37.1 of the *BSB Disciplinary Tribunals Regulations 2027*

Regulatory objectives / PSED / better regulation principles engaged:

82. This Handbook change will allow the BSB to take a more proportionate approach to the service of documents, by removing current over-regulation of the approach taken to service by email. We will consistently apply our new Part 5 regime.

83. By reference to our PSED / RO6 (encouraging an independent, strong, diverse and effective legal profession), we are mindful that this change has potential benefits and disadvantages, by reference to a barrister's protected characteristics. These are set out in the EIA at Annex G. Mitigations identified (ability to specify personal email for reasons of privacy, accept service by post etc) will reduce the likelihood of negative impacts on barristers.

<u>BSB's entitlement to costs (Proposal 12 of first consultation)</u>

Rationale, intent, purpose and effect

84. We will clarify the position that the BSB is entitled to seek to recover the costs it incurs in relation to the conduct of disciplinary proceedings from the point a barrister is referred to a DT. These costs include costs for legal advice, witness or expert costs, attending interlocutory hearings and obtaining transcripts etc.

85. Under the current regime, a DT or Directions Judge can make such orders for costs, in favour or against barristers, as it thinks fit. However, costs incurred by the BSB that are "preparatory to the hearing before the Disciplinary Tribunal" must currently be borne by the BSB. The ambiguity of this language can lead to disputes about what costs the BSB is entitled to recover.

Gaps / defects to be remedied

86. This Handbook change is intended to remove ambiguity about the BSB's ability to recover costs, while still maintaining a regime that takes account of proportionality and an individual's financial circumstances, ensuring fairness in each case.

87. The new regime will continue to work on the basis that internal staff costs associated with handling cases should not be recoverable at this time, because such costs are part of the BSB's baseline operational expenditure (although this may be reviewed in the future). To ensure fairness, this "no recovery of internal costs" approach will also be adopted when the BSB temporarily outsources its workflow due to short-term capacity constraints or conflicts and incurs external costs.

Current Handbook regime: rE248

New Handbook regime: Regulation 36.5 of the *BSB Disciplinary Tribunals Regulations 2027*

Regulatory objectives / PSED / better regulation principles engaged:

88. The new approach is intended to provide greater transparency regarding the BSB's claims for costs and approach to cost recovery, while maintaining public confidence in our regulatory system. Our EIA for this proposal has identified that the principal intersection between this change and a person's protected characteristics is the barristers' ability to bear the costs that the BSB is attempting to recover. On this point, tribunals will continue to take account of an individual's circumstances regarding costs recovery "as they think fit". Additionally, BTAS may appoint a costs expert to assist with assessments.

<u>The BSB's right of appeal (Proposal 13 of first consultation)</u>

Rationale, intent, purpose and effect

89. We will clarify the BSB's right to appeal to the High Court in cases where charges are partially dismissed. This may occur where part of a charge is proved but another part not, or where one Core Duty is found to be breached but another not.

Gaps / defects to be remedied

90. Currently, the BSB can lodge an appeal to the High Court where the DT has dismissed any charge of professional misconduct. However, the current wording of this regulation

could be read as meaning the BSB does not have a right of appeal where part of a charge has been proved, and another part dismissed.

91. To avoid losing appeal rights against partially dismissed cases, the current approach involves duplicating charges across different charge sheets, to preserve the right of appeal if some charges are dismissed but others succeed. This practice is unnecessarily repetitious and inefficient. Our Enforcement Review highlighted that this practice was directly increasing the number of charges bought before a tribunal. The Handbook change will enable the BSB to avoid this repetitious drafting practice in future.

Current Handbook regime: rE237

New Handbook regime: Regulation 33.1 of the *BSB Disciplinary Tribunals Regulations*

Regulatory objectives / PSED / better regulation principles engaged:

92. The revised drafting of charges will enable the BSB to bring cases in a more proportionate and targeted manner, while maintaining public confidence in the regulatory system.

Presumption of anonymity (Proposal 14 of first consultation)

Rationale, intent, purpose and effect

93. This Handbook change will create a presumption that, by default, any witness making an allegation of a sexual nature, in relation to which they are the alleged victim, will be anonymised when giving evidence in DT proceedings. This means that such witnesses will not be referred to in the public domain or named in charges. However, their identity may still be known to those directly participating in proceedings, including the BSB, the barrister and the tribunal panel. The proposed regulations necessarily build in an exception to such a rule where the witness requests that their identity be made public or where their anonymity would cause substantial prejudice to the respondent barrister in the conduct of their defence, which in part aligns with the position under s3 Sexual Offences (Amendment) Act 1992.

94. It is intended this new approach will improve the willingness of witnesses to assist the BSB, particularly in sensitive cases. This is particularly important because witnesses' participation by in the BSB's enforcement proceedings are voluntary: neither the BSB nor BTAS have the power to compel witnesses to attend its hearings. Our current data shows that privacy/anonymity applications are most often made by the BSB in relation to the anonymity of alleged victims/vulnerable witnesses.

Gaps / defects to be remedied:

95. At present, requests for witness anonymity in these types of cases can only be requested on behalf of a vulnerable witness, once the disciplinary process is underway as an application for witness anonymity cannot be granted until directions are made. This approach limits the upfront assurances that can be given to witnesses as to how their identities will be protected during a disciplinary process, which may discourage them from participating in the process.

96. The change will also fill a partial gap in statutory safeguards, which might otherwise have addressed this issue. Statutory protections are only available in restricted circumstances to complainants of sexual offences, and do not include sexual harassment. This supports the Harman Review actions.

Current Handbook regime: rE179

New Handbook regime: Regulation 7.9 of the *BSB Disciplinary Tribunals Regulations 2027*

Regulatory objectives / PSED / better regulation principles engaged:

97. This change recognises that strong, proactive action is required to ensure that the disciplinary regime operates in the interests of consumers and witnesses, particularly given that witnesses involved in the disciplinary process are likely to be vulnerable, especially in the short term[6]. By introducing a presumption of anonymity, we will provide greater assurances to consumers and, therefore, enhance the consumer experience of access to justice as well as the experience of witnesses involved in disciplinary process.

98. We do not have information to suggest that this proposal would have any negative impact on persons with protected characteristics.

Part four: the interim order process

<u>The power to refer to an interim panel and to impose immediate interim orders (Proposal 15 of first consultation and Proposal 3 of second consultation)</u>

Rationale, intent, purpose and effect

99. We will simplify and reduce the grounds for referring a practising barrister to an interim panel to decide whether to impose an interim suspension pending the outcome of disciplinary proceedings. Under the new regulations, an interim order may be imposed pending the disposal of any charges or disqualification applications by a DT where it is necessary:
    a) to protect the interests of clients (or former or potential clients);
    b) to protect the public; or
    c) otherwise in the public interest.

100. Where referral to an interim panel is made by the BSB, an immediate interim order may be imposed by the Chair of the IDB where they are satisfied that it is justified, having considered the risk to the public if such an immediate interim order is not imposed having regard to the regulatory objectives.

101. As a part of this change, we will remove the second limb of the current referral test (i.e. having regard to the regulatory objectives, pursuing an interim *suspension* is appropriate in

[6] On this point, we are mindful of the LSCP's Recognising and responding to consumer vulnerability: a guide for legal services regulators, available here.

all the circumstances). The effect of this change will be that an immediate interim order or interim order can be imposed on the basis of *conditions* alone, where this is sufficient to address the relevant risks. This approach removes the higher threshold for the case to be suitable for an interim suspension and empowers decision-makers to take more proportionate and targeted regulatory action.

Gaps / defects to be remedied

102. The proposal will simplify and streamline the overly prescriptive, current framework for interim suspensions, making it easier to apply and understand in practice, while still ensuring that serious misconduct can be appropriately addressed. The new grounds for interim orders reflect the core purpose of the interim suspension process: to take prompt action to address any risk posed to clients or the public in relation to a practising barrister. We note that the client interest ground will remain a separate ground on the advice of the Legal Services Consumer Panel, on the basis that client interests may not fall within the scope of 'public interest'. We do not see the revised grounds as narrowing the scope of any cases that may currently be referred for interim action.

103. By allowing the referral and imposition of an interim order, decision-makers will be able to take more proportionate action in cases where public protection concerns are adequately addressed through conditions, rather than a period of interim suspension or disqualification. This will codify existing practice, ensuring that there is more consistency in decision-making.

Current Handbook regime: rE268 and rE278.2

New Handbook regime: Regulation 6.1 and 9.2 of the *BSB Interim Orders Regulations 2027*

Regulatory objectives / PSED / better regulation principles engaged:

104. This change will particularly engage with RO1 (public interest / public confidence in the regulatory system) and RO4 (protecting and promoting the interests of consumers), as the proposed new grounds explicitly requires decision-makers to consider whether an order is necessary on the grounds of public protection, client interests or otherwise in the public interest.

105. Further, decision-makers will be able to respond more proportionately and appropriately to cases, as an immediate interim order or interim order may be referred or imposed on the basis of conditions alone. For example, there may be cases where an interim order is necessary for the protection of the public, but the most proportionate outcome would be to allow the barrister to continue practising subject to conditions, i.e. without the need for an interim suspension or disqualification. This change will ensure fairness to barristers, while promoting and protecting the public interest.

Listings process for interim orders (Proposal 17 of first consultation)

Rationale, intent, purpose and effect

106. We will streamline the listing process for interim suspension cases. All interim suspension cases will need to be listed for hearing within 21 days following a referral to an interim panel and reasonable notice of the hearing will be given to the barrister. This approach to listing will also apply to review and appeal hearings.

107. We recognise the importance of building flexibility into listing hearing dates to accommodate the needs of individual barristers. However, our research did not find any other regulator that has an interim orders regime that allows choices of dates for hearings and formal opportunities to provide written objections to proposed dates built into the regulations before the hearing date is confirmed. BTAS can develop working practices to ensure that hearing dates are listed with reasonable notice to the barrister, whilst being able to consider representations from the barrister as to their own availability, rather than prescribing this in the regulations. Given the need for these hearings to occur urgently, the priority is to ensure that such hearings are listed quickly in the public interest.

Gaps / defects to be remedied

108. We will replace the current, convoluted, process for fixing the hearing date for such cases. Currently, barristers are given a fixed date for the hearing, plus an alternative date, and can object to both dates – in which scenario the President of the Council of the Inns of Court (COIC) (or their delegate) then makes a decision on the appropriate date for the hearing.

Current Handbook regime: rE274 (referral to a panel), rE280 (review hearing listing); rE285 (appeal hearing listing)

New Handbook regime: Regulation 7.3 of the *BSB Interim Orders Regulations 2027*

Regulatory objectives / PSED / better regulation principles engaged:

109. Our revised approach reconciles the need to engage in proportionate regulation, maintain public confidence in the regulatory system (RO1) and protecting the interests of consumers (RO4) while not acting against RO6 (encouraging an independent, strong, diverse and effective legal profession).

110. Our EIA identifies several cohorts of barristers who might be adversely affected by our new approach by reference to their protected characteristics: disability, pregnancy and maternity, gender reassignment, age, religion and belief. However, we propose to mitigate against any potential adverse impacts via practical management of cases by BTAS. For example, providing for hearings to be re-arranged due to a barrister's unavailability (e.g. to offer reasonable adjustments or accommodate days of religious significance). Hearings can also be offered remotely and with flexibility as to their timing. If a case continues in the absence of a barrister (as is already the case) the barrister will retain a right of review/appeal against the decision made at the hearing.

Removal of direct referral powers (Proposal 18 of first consultation)

Rationale, intent, purpose and effect

111. We are proposing to remove the power given to interim panels, under the existing regulations, to refer cases directly to a DT, where such a referral has not already been made.

Gaps / defects to be remedied

112. While it has never been used in practice, the exercise of this power could result in incomplete investigations being referred to the DT, effectively bypassing the usual safeguards in the enforcement process. For example, at the point a referral is made to an interim panel, the barrister may not have had an opportunity to respond to the allegations and the BSB may not have decided whether to refer the allegations to the DT, which is inconsistent with the principles of fairness.

Current Handbook regime: rE278.6 & rE287.5.

New Handbook regime: N/A (as we are proposing to remove this power)

Regulatory objectives / PSED / better regulation principles engaged:

113. While we recognise that the power of direct referral was intended to reduce procedural delay, we do not see any strong evidence or reason for taking these matters out of the usual investigation process and consider that any increased risk of delay can be effectively managed through the usual process.

114. As panels will no longer have the power to refer directly matters to the DT, we will remove the potential for panels to override the usual procedural requirements. This will ensure greater consistency and accountability in how matters are handled, improving the overall effectiveness of the disciplinary process. Our proposal will also ensure the proper administration of justice by ensuring barristers are treated more fairly.

Right of review of interim orders (Proposals 19 and 20 of first consultation and Proposal 4 of second consultation)

Rationale, intent, purpose and effect

115. We propose to clarify and extend the existing right to request a review of an interim order in three ways:

- extending the current right, which is available only to the barrister, so that the BSB may also request a review;
- extending the right of review to undertakings accepted and imposed by an interim panel; and
- empowering DT panels to consider and determine an outstanding request to review an interim order made by an interim panel, once the substantive disciplinary hearing of related charges has commenced.

116. Under the current regulations, a barrister may request a review of an interim order where

there has been a significant change in circumstances or for some other good reason. We propose to extend the right to make such a request to the BSB so that it applies equally to both parties. This right may be exercised at any time while the barrister is subject to interim suspension, disqualification or interim conditions. The current right does not extend to undertakings, despite an interim panel being able to accept undertakings from a barrister. We therefore propose to extend the right of review to undertakings, ensuring interim orders and undertakings can be reviewed where the relevant criteria are met.

117. In addition, under the current regulations, where a barrister requests a review of an interim order under the Interim Suspension and Disqualification Regulations, any pending review hearing will be vacated if the hearing of related charges of professional misconduct before the Disciplinary Tribunal has already commenced. In effect this regulation removes the jurisdiction of a review panel to consider a review request once the substantive hearing of charges of professional misconduct before the DT has commenced and the interim order will continue until the DT has reached its finding, even when a review has been requested. Given DT hearings can be adjourned, sometimes for long periods of time, before a finding is reached, we propose to grant DT panels the power to consider and determine a request to review an interim order once the substantive hearing has commenced.

Gaps / defects to be remedied

118. The current regulations contain a number of gaps in relation to the review of interim orders, including interim undertakings. In particular, although an interim panel can accept undertakings from a barrister, there is currently no mechanism for those undertakings to be reviewed or varied if circumstances change. For example, there may be cases where the terms or the undertakings are no longer appropriate or workable, particularly where there is a significant period between the interim order and the final outcome of the proceedings. Similarly, the right to review is not available to the BSB, which means that there is no avenue available for the BSB to request a review of interim orders, where doing so may be in the public interest.

119. We will address this gap by extending the review mechanism to undertakings, giving review panels the power to consider requests to review them. The right to request a review will be available to both parties and may be exercised at any time while the undertakings remain in place, in the same way as they apply to other types of interim orders.

120. In addition, we propose to address the gap in the current regulations, where a request for a review of an interim order made by an interim panel will go unaddressed once the disciplinary hearing has commenced (even if that hearing is then itself adjourned). As a result, an interim order may be in place without any mechanism for review for a significant time period between the commencement of the substantive hearing and the final decision on the charges before the DT.

Current Handbook regime: rE280, 282-283

New Handbook regime: Regulations 10-11 of the *BSB Interim Orders Regulations 2027*, regulation 24 of the *BSB Disciplinary Tribunals Regulations 2027*

Regulatory objectives / PSED / better regulation principles engaged:

121. By providing a mechanism for both parties to review interim orders (including undertakings) that have been imposed, we will improve the fairness and effectiveness of the system. Similarly, our proposal to introduce a power for DTs to review interim orders once the substantive hearing is underway will allow panels to respond appropriately and proportionately, where there is a change in circumstances or for some other good reasons. Overall, our proposals will ensure that both parties and panels have appropriate rights and powers respectively to ensure that the public interest is effectively protected and promoted.

Part five: the health panel and procedure

Rebranding the fitness to practise regime and grounds for referral (Proposal 21 of first consultation)

Rationale, intent, purpose and effect

122. We are introducing a suite of changes that will effectively "rebrand" the BSB's current fitness to practise regime. We intend to move away from the concept of "fitness to practise" and rename the regulations as the "Health Panel and Procedure Regulations" to make clearer the role of the regime as a non-disciplinary means of addressing health issues, better reflecting its purpose.

123. In addition, we are proposing to amend the grounds for a referral to a health panel so that it will be possible where the BSB receives information suggesting that:
    a) there is a health condition (which may be physical or mental, including addiction);
    b) the barrister's ability to practise is impaired on the ground of that health condition; and
    c) the imposition of a restriction or conditions (or undertakings in lieu) is necessary for the protection of the public or is otherwise in the public interest.

Gaps / defects to be remedied

124. The BSB's current Fitness to Practise regime is not often used in practice. Our experience indicates that the current requirement for incapacitation in the definition of "unfit to practise" may well act as a barrier to our ability to refer individuals into the fitness to practise regime, notwithstanding there may be health concerns that may impact their ability to practise. We consider that our proposal to change the grounds for referral will reduce existing barriers and allow the BSB to appropriately manage cases that properly fall under the scope of the health procedures.

125. We also consider that rebranding the regime would help differentiate it from the fitness to practise model that is common in healthcare regulation, improving clarity of purpose for the profession and public and reducing stigma for barristers.

Current Handbook regime: rE303 & Part 6

New Handbook regime: Regulation 3 of the *BSB Health Panel and Procedure Regulations 2027*

Regulatory objectives / PSED / better regulation principles engaged:

126. Our overall intention is to ensure that the BSB can effectively use the health regime to respond proportionately and appropriately in health cases. In our view, these changes will allow the BSB as the regulator to better protect and promote the interest of the public and consumers, whilst ensuring fairness to barristers.

127. As we are updating the threshold for referring matters under the health regime, we recognise that a greater proportion of barristers could fall within the scope of the health regulations. We acknowledge the concern that this may disproportionately impact some groups, including barristers with disabilities under the Equality Act 2010 or those with other protected characteristics. However, to mitigate this risk, the regulations and supporting guidance are clear that the threshold remains a high one, emphasising the need for any referral to be "necessary" for the protection of the public or in the public interest. This will avoid instances where those with chronic illnesses, managed conditions, or minor impairments are referred without good reason.

Changes to streamline the health panel and procedure

Convening a panel and fixing a hearing date (Proposal 22 of first consultation)

Rationale, intent, purpose and effect

128. We will impose a duty on BTAS, following a referral by the BSB of a barrister to a health panel, to convene a panel, fix a hearing date and notify both parties of the date. By setting this responsibility out in the regulations, we will create certainty and clarity around the listing process and codify existing practice.

Gaps / defects to be remedied

129. The current regulations are silent as to who will convene a fitness to practise panel and fix hearing dates, following a referral of a barrister by the BSB. However, on a practical level, a panel needs to be convened and a hearing date fixed before a preliminary or full hearing can take place. Further, we consider that both parties should be notified of the hearing date.

Current Handbook regime: rE309

New Handbook regime: Regulations 5-6 of the *BSB Health Panel and Procedure Regulations 2027*

Regulatory objectives / PSED / better regulation principles engaged:

130. Our proposal will ensure that there is a clear responsibility for progressing health matters under the process and for notifying both parties of the progression of a case, so there can be full participation with sufficient notice. This will ensure greater consistency and

accountability in the management of health matters, improving the overall effectiveness of the process.

Introducing a power to accept undertakings prior to referral (Proposal 23 of first consultation)

Rationale, intent, purpose and effect

131. The BSB will have the power to agree conditions which are intended to manage a barrister's health issues in clear and straightforward cases before and instead of a referral being made to a health panel. We see value in introducing such a power to manage cases effectively, efficiently and proportionately where both the practising barrister and the BSB agree appropriate undertakings.

Gaps / defects to be remedied

132. Currently, the BSB is unable to accept undertakings in appropriate cases and, instead, must make a formal referral to a health panel. We consider that the benefits of this proposal are twofold:
    - There will be no need to convene a panel or progress the matter through the full process (including a preliminary and full meeting). This will likely result in a more expedient process, saving time and resources; and
    - The BSB will have appropriate powers available to adopt a more compassionate response to reduce unnecessary stress on individuals (which we consider is a relevant consideration in health cases), in appropriate cases.

133. To ensure the BSB has appropriate powers to address concerns notwithstanding undertakings may have been offered or agreed, the proposed regulations will still permit a referral to be made where an undertaking has: (a) been proposed but not agreed; (b) been agreed but not complied with; (c) been agreed but is no longer sufficient; or (d) expired.

Current Handbook regime: N/A

New Handbook regime: Regulation 4 of the *BSB Health Panel and Procedure Regulations 2027*

Regulatory objectives / PSED / better regulation principles engaged:

134. By introducing these new powers, the BSB will be able to respond proportionately where the parties are in a position to agree relevant undertakings in the public interest/to protect the public and avoid the need to engage in the formal process.

135. Further, our EIA found that the proposal will result in a positive outcome for barristers with the protected characteristic of disability, age, and pregnancy/maternity (who are more likely to engage with the health process), as it provides an alternative resolution in health matters, where appropriate.

Powers to impose interim conditions at preliminary meetings (Proposal 25 of first consultation)

Rationale, intent, purpose and effect

136. Under the current regime, panels have the power to impose interim suspension or disqualification at a preliminary meeting. We propose to introduce a power for health panels to impose interim conditions (in addition to the existing power to impose an interim suspension or disqualification) into the new regulations.

Gaps / defects to be remedied

137. In some cases, we think that it may be more appropriate for a panel to allow a barrister to continue practising subject to conditions only, rather than a suspension or disqualification, pending the full meeting. We recognise that an interim suspension or disqualification is a draconian measure and conditions may adequately address any risks or concerns held by a panel at the preliminary meeting stage. Instead, interim conditions would provide a less restrictive alternative within the regulatory framework than interim suspension or disqualification, particularly where it would allow a barrister to continue to practise safely while necessary conditions are in place.

Current Handbook regime: rE313-317
New Handbook regime: Regulation 8 of the *BSB Health Panel and Procedure Regulations 2027*

Regulatory objectives / PSED / better regulation principles engaged:

138. This proposal will give panels powers to impose a wider range of interim measures pending determination of the matter at a full meeting, allowing panels to respond more proportionately and appropriately on a case-by-case basis. It will ensure the protection and promotion of the public interest, whilst balancing the principle of fairness by avoiding unnecessarily harsh restrictions on a barrister's ability to practise. It will also benefit consumers who are clients of the affected barristers, who will be expected to act in accordance with the conditions imposed on them.

Length of orders (Proposal 24 of first consultation)

Intent, purpose and effect

139. We have amended the provisions relating to the duration of health orders to remove the current time limit (of six months or indefinitely) on suspensions and disqualifications, so that panels have the power to impose a health order for a fixed period not exceeding 36 months. Additionally, panels may reconvene to review an order prior to its expiry to assess whether there are any ongoing public protection or public interest concerns before the barrister resumes their practice. Such a review will be mandatory before the expiry of any order that was imposed for a period of 12 months or more.

140. Where a panel decides that a barrister remains unable to practise, panels will have the power to impose a further order. Where the individual has been subject to a restriction (whether by order and/or undertaking) for a cumulative period of at least 36 months, the panel may go on to impose an indefinite order.

Gaps / defects to be remedied

141. Under the current regime, where a panel has decided that an individual is unfit to practise, the panel may direct that the individual be subject to an order that may be imposed indefinitely or for such period, not exceeding six months. We do not consider the existing six-month time limit to be a relevant or helpful measure as it is likely to be too short a period to address some health conditions, given the potential need to access and complete treatment. Instead, we consider that an initial upper limit of 36-months is appropriate. The panel will then have the ultimate power to impose an indefinite order, following a review, which would provide panels with sufficient powers to respond appropriately to the specific health concerns presented in each individual case.

142. In addition, the proposal to introduce a mechanism for reviewing whether there are any residual concerns relating to public protection, the public interest or consumer protection before a barrister resumes their practice addresses a gap in the current framework. It will provide an opportunity to ensure that any ongoing health concerns are properly considered in the public interest.

Current Handbook regime: rE320
New Handbook regime: Regulation 9 and 11 of the *BSB Health Panel and Procedure Regulations 2027*

Regulatory objectives / PSED / better regulation principles engaged:

143. Our proposals seek to balance fairness to the individual against the need to impose a health order for the protection of the public interest and to the benefit of consumers. We have implemented a flexible approach to imposing and then continuing health orders, in cases where there are ongoing public protection concerns, to improve the effectiveness of the system by allowing tailored outcomes that better reflect principles of proportionality and consistency in decision-making.

Rights of review and clarifying the review process (Proposal 26 of first consultation)

Rationale, intent, purpose and effect

144. We propose to streamline the rights of review that are available under the health process so that there is a single right to request a review of interim or final orders at any time during their duration, where there is a “significant change in circumstances” or “some other good reason”. By simplifying and clarifying the review process, we intend to make it easier to understand and navigate in practice.

Gaps / defects to be remedied

145. Currently, the regulations provide for two review rights in relation to decisions made by fitness to practise panels. The first right of review arises where a panel has imposed an interim restriction (i.e. suspension or disqualification), or accepted undertakings at a preliminary hearing. In those circumstances, the regulations allow the barrister to request a review by the panel at any time, when the interim restriction is in place.

146. The second right of review applies at any time during a period of restriction or conditions

(including interim restrictions), where there has been a significant change of circumstances or for some other good reason. However, a review can only be initiated if the BSB refers the matters – either on its own initiative or following a request from the barrister. This means that the barrister cannot make a review request directly, without it first going through the BSB.

147. It is unnecessarily complex to have two separate but potentially overlapping review rights. Our proposal to streamline the right to review will ensure that the review process avoids unnecessary repetition, reducing delays and inefficiencies in the process, whilst appropriately maintaining safeguards for barristers. In particular, our proposal will not prevent barristers from making further requests for a review where there is a significant change in circumstances or some other good reason, following an initial refusal. The threshold for seeking a review is sufficiently broad to capture legitimate grounds for a review and requests will only be refused where they lack merit.

Current Handbook regime: rE313, rE324-327

New Handbook regime: Regulation 10 of the *BSB Health Panel and Procedure Regulations 2027*

Regulatory objectives / PSED / better regulation principles engaged:

148. We consider that the proposal will simplify the revised regulations by creating a single, streamlined right of review in relation to any restriction or condition. This proposal engages with the better regulation principles of consistency and transparency by ensuring that all health matters are subject to the same review process, providing greater clarity and understanding for barristers.

Right of appeal in health matters (Proposal 5 of second consultation)

Rationale, intent, purpose and effect

149. Our proposal is to introduce a right for the BSB to appeal decisions of a Health Panel made at either a preliminary or full hearing. The BSB's right of appeal will mirror the existing rights available to the barrister, which will allow both parties to appeal decisions to impose, extend, vary or replace a period of restriction or conditions. In addition, we will also allow the BSB to appeal a decision not to make an order.

150. As part of the proposal, an appeal must be made in writing to BTAS, setting out the grounds of the appeal, within 14 days of the date of the decision. This time limit will equally apply to both parties. BTAS will then be required to notify both parties of the appeal hearing date.

Gaps / defects to be remedied

151. The proposal seeks to address an existing gap in the process, whereby the BSB is not afforded the right to appeal a decision of the Health Panel or be notified of the appeal hearing or outcome. We consider that there may be exceptional cases where an appeal is necessary to ensure that the public interest is properly protected. For example, this may

arise where the BSB considers that the panel has erred in its decision or has misapplied or misunderstood the medical evidence before it. In those circumstances, we consider it appropriate for the BSB, like the barrister, to have the opportunity to challenge the decision through the appeal process.

Current Handbook regime: rE328-330

New Handbook regime: Regulation 12 of the *BSB Health Panel and Procedure Regulations 2027*

Regulatory objectives / PSED / better regulation principles engaged:

152. By providing both parties with a right of appeal in health matters, we will improve the fairness and effectiveness of the system. Allowing the BSB to appeal decisions to impose, extend, vary, replace or not impose a period of restrictions or conditions will also strengthen public confidence by ensuring that there is an appropriate mechanism to challenge decisions, where the BSB considers that the public interest has not been adequately protected or promoted.

Part six: Panel composition and support

Changes to panel composition (Proposals 28 & 31 of first consultation)

Rationale, intent, purpose and effect

153. We are proposing to make the following changes to panel composition:
    a) In relation to IDB panels constituted under the Enforcement Decision Regulations, we intend to reduce panels from five to three members, with a lay majority; and
    b) In relation to Health Panels constituted under the Health Panel and Procedure Regulations, we intend to introduce panels comprising of three members, being a chair, a practising barrister and a lay member. As part of this change, panels will have the power to appoint a medical advisor as required, allowing the panel to draw on specialist medical knowledge and experience as they see fit.

154. The primary purpose of these changes is to reduce delays and difficulty in assembling a panel, reassembling larger panels for any adjourned hearings, as well as reviewing and agreeing written decisions, which will ultimately improve speed and efficiency.

Gaps / defects to be remedied

155. In relation to IDB panels, the change from five to three-person panels, with a lay majority, will preserve the quality of decision-making, whilst improving the overall efficiency of the process. Our proposal will reduce the delays and practical difficulties that arise when scheduling hearings around the availability of five panel members.

156. Similarly, our proposal to reduce panel size in health matters is intended to reduce any delays associated with larger panel size. In addition, we consider that a reduced panel size is appropriate and proportionate in health proceedings, given their sensitive and less adversarial nature.

Current Handbook regime: Schedule 1 to the *Enforcement Regulations,* Schedule 1 to the *Fitness to Practise Regulations*

New Handbook regime: Schedule 1 to the *BSB Enforcement Decision Regulations 2027,* Schedule 1 to *BSB Health Panel and Procedure Regulations 2027*

Regulatory objectives / PSED / better regulation principles engaged:

157. The use of reduced panel sizes in matters before an IDB and Health panel will support more efficient decision-making. Our proposals in relation to panel composition will facilitate a more proportionate approach to managing panels, reflecting our commitment to improving efficiency and reducing delays throughout the process.

158. However, we recognise that the proposals may have potential equality impacts. Our EIAs identified that the primary potential risk is that any unconscious bias of a panel member affecting decisions could be stronger, given the reduction in the number of panel members. With a larger panel, the impact of any one person's unconscious bias can be diluted and checked by other members (although this is not guaranteed and there is a chance that bias can be shared across the whole panel). Further, we acknowledge that, by reducing the number of panel members, there is also potential to reduce the likelihood of diversity among the panel members. We consider that these risks can be appropriately mitigated (as set out in greater detail in our EIAs at Annex G).

Panel secretary role (Proposal 30)

Rationale, intent, purpose and effect

159. We propose to replace the role of the clerk to the DT panel with a new Panel Secretary role, under the DTRs. The Panel Secretary role will formally be a BTAS staff member, rather than a junior barrister. The intention is that BTAS will specifically recruit an additional resource for this role.

160. In addition to having the roles and functions specified in the proposed regulations (such as reading out of the charges at the start of a hearing), the Panel Secretary would provide additional administrative support to DT panels. For example, we envisage that panels may be assisted by the Panel Secretary providing support with the drafting of decisions. The Panel Secretary may also manage uncontested or straightforward case management directions. Our comparative research shows that this is common practice among many healthcare regulators who use panel secretaries for drafting decisions.

Gaps / defects to be remedied

161. In practice, sourcing junior barristers to act as clerks – particularly for longer hearings – has proved challenging. As a result, BTAS staff have frequently had to step in to fulfil the role to ensure hearings proceed. In 2023, BTAS staff covered 21% of total hearing days (13 out of 61 hearing days). In 2024, this increased to 33% (62 out of 85 hearing days). In 2025, as at the date of the consultation, BTAS staff covered 82% of hearing days (9 out of 11 hearing days). This data illustrates the increasing operational strain on BTAS under the current regime and supports the case for formalising this role.

162. Removing the requirement for barristers to fill the existing clerk role and replacing it with

a Panel Secretary, who will be a member of BTAS, reflects the primarily administrative (not advisory) nature of the role and offers a more sustainable solution, given the growing difficulty in sourcing barristers to fill reliably the position.

Current Handbook regime: rE121, rE132-136

New Handbook regime: Regulation 12 of the *BSB Disciplinary Tribunals Regulations 2027*

Regulatory objectives / PSED / better regulation principles engaged:

163. In our view, the proposal will allow BTAS to build internal capacity for the role and reduce reliance on external availability, which will ultimately reduce delays and improve efficiency of the system. As such, our proposal will allow for a more proportionate use of resources and therefore promote the better regulation principles.

164. Our EIA has identified that this proposal could impact on barristers with the protected characteristic of age. This is because BTAS has historically relied on junior barristers to fulfil this role and it is possible that some used the opportunity to supplement their practice and develop valuable skills before progressing to other work. However, given the frequency with which BTAS staff have performed this role in recent years, we consider that any potential impact of this proposal on junior barristers would be minimal.

Part seven: Proposals relating to open justice and the principles of transparency and accountability

165. The following proposed changes are informed by established principles of open justice, as set out in case law; that the public should be free to attend court proceedings and that proceedings should be freely reportable. They are also informed by our statutory duties regarding transparency, accountability, proportionality and consistency; our need to regulate in the public interest (and maintain public confidence in the regulatory system); and the need to balance transparency with fairness to individuals, particularly where there is the potential for prejudice. We are also mindful of the LSB's April 2022 statement of policy on empowering consumers, expectation 18a of which requires regulators to ensure useful information is made available to consumers regarding "providers' disciplinary and enforcement records, including any sanctions".

Bringing forward the timing of publication of disciplinary cases (Proposal 32 of first consultation)

Rationale, intent, purpose and effect

166. We propose to bring forward the publication of the fact that disciplinary proceedings are underway by publishing the identity of the barrister and a summary of charges, following the setting of case management directions by BTAS. This was one of two possible options during our first consultation (proposal 32).

167. The change is intended to increase awareness of the cases that the BSB is prosecuting and improve transparency and accountability, as well as trust and confidence in the BSB's regulation.

Gaps / defects to be remedied

168. Having considered legal rights and obligations (including Article 8 of the ECHR) and related case law, as well as peer regulator practices (notably the SRA) we have concluded that there is scope for increasing transparency in relation to our disciplinary proceedings, for the reasons stated above. While the name of the barrister is already published, along with the provisions of the Code they have allegedly breached, we do not currently publish the particulars of the charges until the start of the start of the substantive hearing. This will occur as part of this change and at an earlier stage of the proceedings. The change will improve public awareness of the disciplinary matters that the BSB is pursuing.

Current Handbook regime: N/A – publication occurs in accordance with the current BTAS Publication Policy

New Handbook regime: Regulation 7.10 of the *BSB Disciplinary Tribunals Regulations 2027*

Regulatory objectives / PSED / better regulation principles engaged:

169. This change is primarily intended to protect and promote the public interest by enhancing public confidence in the regulatory system. It also engages with our statutory obligation to engage in our regulatory activities in a transparent manner.

170. The change will also benefit consumers by providing greater transparency about disciplinary matters involving barristers. Greater confidence in the regulatory system supports consumer confidence in the profession and their experience of accessing justice. Earlier publication of the fact and nature of proceedings will provide greater clarity about the regulatory process and demonstrate that appropriate action is being taken where concerns arise in relation to a barrister's professional conduct.

171. As previously signposted, our EIA identified that barristers with certain protected characteristics (race/sex) are more likely to be reported to the BSB than others. We therefore recognise that this proposal has the potential to affect barristers with these protected characteristics more than others. Our proposal to publish outcomes in all cases, including dismissal of cases (discussed below) is how we mitigate against such differential outcomes, while retaining our approach of promoting open justice. As our EIA states, "an important consideration in regard to equality and fairness to barristers is that if charges are not proved, this fact should be equally as publicised as the initial publication" (see the next proposal below).

Publication to occur in all cases, including dismissals (Proposal 2 of second consultation)

Rationale, intent, purpose and effect

172. Under the current regulations, BTAS only publish the finding and sanctions of DT cases where charges are proved. The finding in cases where charges are dismissed are currently only published where the respondent barrister so requests. In future, we will extend the publication provisions to create a default expectation that BTAS may publish outcomes in all cases, including where charges are dismissed. We will, however, maintain

BTAS's discretionary power not to require publication – either in full or in part – where publication is not in the public interest.

Gaps / defects to be remedied

173. The change will address an inconsistency in the current framework, namely that while DT hearings are held in public, BTAS must not publish the outcome where charges are dismissed, unless the Respondent requests publication. This change will ensure not only that the public should be free to attend tribunal proceedings but that the proceedings should generally be freely reportable, underpinning open justice.

174. This change also prevents a new anomaly arising as a consequence of the introduction of proposal 25 above, where publication of charges will occur at an earlier stage than currently. Because we will publish details of charges that may ultimately be dismissed, we regard it as fairer to the barrister to also publish outcomes where charges against them are ultimately not proved. This will help restore and protect the barrister's reputation.

175. Our change is also in alignment with recommendation 22 of the Harman Review, which called for prompt publication of DT decisions "setting out reasons as to why charges were proved or not proved."

Current Handbook regime: rE243 / rE243A

New Handbook regime: Regulation 32 of the Bar Standards Board Disciplinary Tribunals Regulations 2027

Regulatory objectives / PSED / better regulation principles engaged:

176. This change is primarily intended to protect and promote the public interest by enhancing public confidence in the regulatory system. It also engages with our statutory obligation to engage in our regulatory activities in a transparent manner. By reference to protecting and promoting the interests of consumers, the change will allow the BSB to more fulsomely comply with the LSB's statement of policy on empowering consumers (requirement 18a), which relates to making available information about providers' disciplinary and enforcement records. While BTAS have previously published details of proven charges on its website, it will now also publish details of charges that are dismissed and the reasons for this. However, where the charges are dismissed the proposed publication period will be shortened to 1 year (reduced from a minimum 2 years).

177. See proposal 32 above for our analysis of the EIA impacts for this proposal.

<u>Public vs private hearings across the enforcement process (Proposal 33 of first consultation)</u>

Rationale, intent, purpose and effect

178. We have conducted an end-to-end review of our approach to public versus private hearings across our enforcement process. Also taking account of changes to the date of publication of charges (proposal 32), we have concluded it is possible to introduce greater transparency across the enforcement process.

179. We propose that all hearings, following the first case management hearing (and with the exception of reviews of interim orders which would otherwise occur in private), regarding ongoing disciplinary proceedings before a Directions Judge and/or a DT will occur in public unless ordered otherwise.

180. Anticipating a potential increase in anonymity applications made by barristers (or applications not to publish at all), we will establish a robust framework for considering anonymity applications on as consistent basis.

Gaps / defects to be remedied

181. The changes will our regulations will provide greater transparency in the disciplinary regime, as described above.

Current Handbook regime: rE123 (presumption that hearings before directions judge will be in private); rE127 (application for hearing to be held in private); rE156 (presumption that DT is held in public); rE243 – rE243A (publication of DT findings and sanctions).

New Handbook regime:
Regulation 14 of the *BSB Disciplinary Tribunals Regulations 2027*.

Regulatory objectives / PSED / better regulation principles engaged:

182. See proposal 32 / proposal 2 (second consultation) above for impacts.

Media and non-party access to documents (Proposal 34 of first consultation)

Rationale, intent, purpose and effect

183. BTAS will introduce a new Policy (Annex H) which sets out the approach to disclosure and access to documents for non-parties (including the media), without introducing explicit provisions in the regulations. Certain specified documents will be routinely published and made available to non-parties. Non-parties may also request access to other documents, which are not subject to automatic publication.

184. Providing access enables members of the public and the press, who are not parties to the proceedings, to understand the issues in a case and the conclusions reached. We recognise the importance of transparency in the BSB's disciplinary process, given the public interest in attending hearings and the freedom of the press to report proceedings.

185. The guidance will support other open justice provisions, outlined above, while ensuring that the DT retains the discretion of how to determine how the principle should be applied, having regard to the circumstances of any particular case. This Policy also summarises scenarios where the publication of documents may be restricted – for example, confidential, legally privileged or sensitive personal information.

Gaps / defects to be remedied

186. The changes will help rectify a gap in our current regime as there are currently no

provisions regarding non-party's right access to documents filed with the DT or otherwise referred to or served in DT hearings. The guidance will provide a clear route to obtaining such information rather other than via *Freedom of Information* requests, the spirit of which the BSB voluntarily adheres to.

Current Handbook regime: N/A (new proposal)

New Handbook regime:

Regulatory objectives / PSED / better regulation principles engaged:

187. The proposal engages the better regulation principles of transparency and accountability by providing a clear framework for non-party access to documents, while retaining appropriate discretion for the DT to consider the circumstances of the individual case and any applicable restrictions on publication.

188. This proposal also supports the regulatory objective of protecting and promoting the public interest by strengthening transparency and supporting the principle of open justice in disciplinary proceedings. Providing greater access to information about proceedings will enable the media and members of the public to understand the issues considered and conclusions reached by the DT, supporting confidence in the BSB's regulatory system and ultimately improving consumer experience of access to justice.

189. See proposal 32 / proposal 2 (second consultation) above for impacts. In addition to the above, we have undertaken a separate EIA for this specific rule change, acknowledging it raises distinctive equalities issues by reference to barristers' protected characteristics, separate to already-considered issues. For example, publishing information regarding a person's heath may negatively impact persons who are disabled; likewise, disclosing a person's sexual orientation or gender reassignment in published documents may lead to harm. We will mitigate against such negative outcomes via redaction and anonymisation. We shall also introduce reasonable adjustments where helpful – for example, providing alternatives to making objections in writing, where this is not possible.

Other drafting changes: changes to drafting approach and terminology

Changes intended to give effect to our drafting principles

Rationale, intent, purpose and effect

190. In redrafting the regulations, we have been guided by key drafting principles, including:
- streamlining and simplifying the revised regulations, including through the use of plain English;
- improving the structure and organisation of the regulations by creating four distinct new sets of regulations, capable of standing alone; and
- clarifying the powers and delegated powers for key decision-makers.

191. In applying these drafting principles, we have sought to reduce unnecessary complexity and duplication, clarify existing powers and improve the overall usability of the regulations

for barristers, consumers and other users. We have removed guidance material from the regulations so that the regulations can be understood, without reliance on extensive supporting material.

192. Where existing provisions contained unnecessary or overly prescriptive detail (such as administrative and operational details), this has been moved to guidance or other supporting documents. This approach is consistent with best regulatory practice and allows the regulations to remain focused on the substantive rights, obligations, powers and safeguards that form the regulatory framework.

193. One way we have achieved this is through revising the provisions on special measures. We have replaced previous provisions and removed the concept of 'vulnerable witnesses' from the new regulations. This change will not reduce or limit the protections available to witnesses, including those who may be vulnerable. Instead, the regulations now require the Tribunal to consider whether any measure is 'desirable' to facilitate the giving of evidence by a witness or the Respondent. This reframing ensures a more flexible and inclusive approach, which furthers the overriding objective. We have drafted a Policy to set out this approach (Annex H).

194. The new regulations have been drafted, as far as possible, so that each set can standalone. This will allow readers to identify the relevant powers, responsibilities and processes within the applicable set of regulations, without extensive cross-referencing to other provisions or Parts. While this approach may result in some repetition, we consider that this is justified by the resulting improvements in clarity, readability and accessibility.

Gaps / defects to be remedied

195. The existing regulations can be complex and difficult to navigate, particularly where relevant provisions are duplicated. The revised structure will address this by providing a more coherent and accessible framework, particularly for lay users, and by improving transparency around the powers and responsibilities of key decision-makers.

196. The changes will not remove substantive rights or safeguards from the regulations. Rather, it will ensure that the regulations are clearer, more proportionate and easier to understand and set out administrative and operational detail in supporting guidance and other documents (where appropriate).

Current Handbook regime: across the Handbook regime – i.e. Parts 5A-D.

New Handbook regime: across the Handbook regime – i.e. *BSB Enforcement Decision Regulations 2027, BSB Disciplinary Tribunals Regulations 2027, BSB Interim Orders Regulations 2027* and *BSB Health Panel and Procedure Regulations 2027*

Regulatory objectives / PSED / better regulation principles engaged:

197. The changes are intended to provide a framework that is better organised, more simplified, expressed in plain English and reflects best regulatory practice. This will

improve accessibility and transparency for the profession, decision-makers, the public and other consumers.

198. These changes will also ultimately support consumers' experience of accessing justice by providing greater clarity about the process. A clearer and more transparent regulatory practice should assist consumers in understanding how concerns about professional conduct are dealt with and how decisions are reached, which is likely to increase confidence in the regulatory process and is particularly relevant to consumers who may be involved in the disciplinary process, including as witnesses.

Changes to defined terms

Rationale, intent, purpose and effect

199. We will continue to use a single index of defined terms across all sections of the Handbook, as contained in Part 6. In redrafting the Enforcement Regulations, we have reviewed a number of the defined terms used in the current regulations to improve consistency and clarity. The key changes are reflected in the proposed additions and amendments to the defined terms in Part 6 of the Handbook, as set out in Annex A 'List of Part 6 revisions'. Some key changes include, introducing a definition for 'judge', removing the definition of 'professional misconduct' and replacing the 'Commissioner' with either the BSB or 'BSB authorised decision-maker', as appropriate.

200. We note that references to 'registered European lawyers' and 'qualified Swiss lawyers' have been retained in the new regulations. However, this is a temporary measure, and in a separate piece of work outside the scope of this project these terms will be replaced. They are likely to be replaced by the term 'adaptation period lawyers' to align with work to update the Handbook to incorporate requirements from post-Brexit trade agreements regarding the mutual recognition of lawyers, including with Switzerland. These proposals will be subject to a separate LSB application, which will include proposed amendments to the new Enforcement Regulations. We expect this LSB application to be submitted later this year.

Gaps / defects to be remedied

201. Our review identified a number of issues with the defined terms in current regulations, including inconsistencies in terminology, definitions that are unclear or do not operate coherently, and instances where 'defined terms' are used, without being defined. These issues can make it unclear whether a term has a specific meaning for the purposes of the enforcement process and may create uncertainty for those applying the regulations. In addition, we have revised, removed or introduced defined terms where the current approach was causing practical or operational difficulties.

202. The revised regulations will address these issues by ensuring that terminology is used consistently and that relevant terms have a clear and appropriate meaning. Defined terms will also be clearly identified through italicisation throughout the regulations, making it easier for readers to recognise when a term has a specific, defined meaning.

Current Handbook regime:
Part 6: Definitions of the Handbook

New Handbook regime:
Part 6: Definitions of the Handbook

Regulatory objectives / PSED / better regulation principles engaged:

203. The changes support the principles of transparency, accountability and consistency by ensuring that terminology used throughout the enforcement framework is clear, coherent and applied consistently. This will improve the transparency of the regulatory framework and assist decision-makers in understand the powers that are available to them and barristers, who are subject to the regulations, in understanding their rights and obligations.

204. The changes will also support consumers experience of access to justice by making the regulatory framework easier to understand and navigate. Clear and consistent terminology will help consumers and other participants in the enforcement process, including witnesses, to better understand the process.

(c) Implementation

Detail setting out how and when the alteration or alterations will be implemented.

205. We have already implemented the change to our approach to investigations, deferring the communication of written allegations to a later stage, as a priority since December 2025. The operational guidance on our new approach to allegations was also updated and has been made available, since implementation. This was not a change to our regulatory arrangements. As part of our alterations, however, we are now seeking to reflect our updated approach to allegations more clearly in the regulations. As this alteration will reflect existing practice, we do not anticipate any further action will be required to operationalise our approach to investigations.

206. In early October 2026, we published our proposed new Enforcement Regulations as part of the BSB's second consultation feedback statement. Alongside these materials, we also published a press release on the BSB website, which informed the public that we would be making a forthcoming application to the LSB seeking approval of our changes to the Enforcement Regulations. By publishing these materials (particularly the proposed new Enforcement Regulations), we are providing the profession and other stakeholders with early visibility of the proposed new regulatory arrangements, while the LSB considers the application, and allowing stakeholders to become familiar with the proposed changes, in advance of implementation. We have made clear that the documents published (both as part of the BSB's consultation feedback statement and as part of the BSB's application to the LSB) remain subject to LSB approval.

207. We recognise that, given the anticipated timetable for LSB approval, there may be a relatively short period between approval and implementation (in February 2027). However, we consulted on this timeframe for implementation and the majority of stakeholders agreed

with it. We are confident that our approach can still provide the profession with sufficient time and capacity to comply, particularly given that the profession will have had access to the proposed regulations from their initial publication while the LSB considers the application.

208. Following approval by the LSB, we will publish a final version of the new regulations and, as appropriate, supporting guidance and policy documents, immediately prior to their coming into force. We plan to produce other materials that will clearly set out the changes to the existing enforcement process and practical implications for those involved in enforcement proceedings to improve understanding and clarity. We will also monitor implementation closely and provide further support where any issues or areas of uncertainty are identified.

209. In addition, both the BSB and BTAS are taking steps to ensure that they have the capacity and capability to deliver the proposed changes. The BSB has developed an implementation plan to support staff operating under the new regulations. This includes providing regular communication updates to BSB staff and training to BSB staff, decision-makers and IDB decision-makers on the new regulations. As part of our preparation for launching the changes, we are updating our relevant guidance, policy documents and process maps to ensure that adequate and up-to-date resources are available to staff.

210. Similarly, with support from the BSB, BTAS is developing an implementation plan to support its readiness for the revised regulations. This includes the recruitment of an additional resource for the panel secretary role and the provision of necessary training, the recruitment of additional panel members, training existing and new panel members, developing and updating BTAS policies and guidance documents, as well as developing key performance targets for the running of cases through the disciplinary process. The BSB and BTAS and continuing to work closely together on these arrangements, including through regular meetings and engagement on operational readiness and the development of supporting materials.

211. As part of this engagement, BTAS has flagged the steps for it to implement the revised regulations on 1 February 2027, particularly in relation to the additional resources, training and preparation required for the new arrangements. We recognise that BTAS is a key stakeholder in the implementation of the revised regulations and that its operational readiness is essential to effective implementation. We are therefore continuing to work closely with BTAS to monitor progress against its implementation plan, identify emerging issues and ensure that appropriate arrangements are in place before the revised regulations come into force.

212. To facilitate BTAS' operational readiness, we have included a narrow exception to the transitional provisions for cases where a Convening Order has been issued on or before 31 January 2027 (as set out above, under Proposal 1 to the second consultation). In these cases, the current regulations will continue to apply. As a Convening Order is usually issued a few weeks (and not less than 14 days) before the substantive hearing (and the

timeframe for issuing varies in practice), this exception will only apply to a subset of ongoing disciplinary cases. We will work with BTAS in relation to those cases to ensure that the affected parties have certainty and reassurance about the regulations that will apply to their case.

213. We consider that this limited exception is a more proportionate approach than adopting a phased implementation across the full caseload of disciplinary cases, which could result in two regulatory regimes operating concurrently for a period of many months or potentially years. The exception is intended to address cases with substantive hearings scheduled shortly after the implementation date, while allowing the revised regulations to apply to the wider caseload from 1 February 2027.

214. The transitional exception will also provide greater certainty to these parties allowing them and the Tribunal panel to continue preparing for and conducting those hearings under the existing framework. This will provide BTAS with a limited period to manage cases already approaching the substantive hearing, while enabling the revised regulations to become the applicable framework for the wider caseload from 1 February 2027.

215. The BSB and BTAS will continue to monitor upcoming substantive hearing listings and the issuing of convening orders ahead of implementation. This will allow us to monitor the number and timing of cases falling within the exception.

216. In relation to the examinations on the regulations, we note that the next scheduled examinations for barrister candidates will occur in May 2027. As a result, this cohort of prospective barrister candidates will have a period of approximately four months between publication of the approved new Enforcement Regulations and their examinations. We consider this to be a sufficient period.

(d) and (e) Impact on other regulated persons/approved regulators

Provide an assessment of whether the alteration or alterations impact on the regulation of regulated persons by another approved regulator(s) and/or external regulatory bodies. If there is impact please provide detail of any consultation or engagement with the affected regulator and details of any regulatory conflict and how such conflict will be addressed, as is reasonably practicable.

217. As indicated above, these changes will principally affect “applicable persons”, which is an existing BSB concept within the BSB Handbook. Applicable persons are unregistered barristers or BSB regulated persons (including practising barristers) who were, at the time of the conduct complained about BSB regulated persons, and therefore subject to BSB oversight – even if they have subsequently been suspended, disbarred, disqualified etc.

218. The BSB has a default ban (via rS43 / rS73) on barristers being regulated by more than one approved regulator at any one time. Except for a small cohort of barristers granted a waiver from these handbook provisions, it is exceptionally unlikely that these reforms will directly impact on regulated persons by reference to their oversight by another approved regulator (i.e. a solicitor authorised by the SRA). For those who are exempt from rS43 /

rS73 requirements, waivers issued by the BSB are typically based around the expectation of a structural separation of roles and workloads for dual / multi-qualified regulated persons. This helps ensure clarity over which approved regulator has oversight in any given scenario or matter.

219. For more general scenarios involving the potential for regulatory conflict (i.e. a barrister working for a solicitors' firm), the BSB Handbook already has mechanisms in place, which set the overall ground rules for establishing regulatory jurisdiction. Our principal conflict / jurisdiction in the Handbook is rI8. This rule states that:

220. "If you are a BSB *authorised individual* who is employed by or a *manager* of an *authorised (non-BSB) body* and is subject to the regulatory arrangements of the *Approved Regulator* of that body, and the requirements of that other *Approved Regulator* conflict with a provision within this *Handbook* then the conflicting provision within this *Handbook* shall not apply to you. You will instead be expected to comply with the requirements of that other *Approved Regulator* and, if you do so, you will not be considered to be in breach of the relevant provision of this *Handbook*."

221. The above provisions set the overall division of oversight between the BSB and other approved regulators regarding which rules of professional conduct will normally apply. In addition, the BSB and SRA have a long-standing MOU[7], which specifically aims to ensure "coordinated oversight and minimisation of duplication of effort" in relation to oversight and investigations. The MOU commits both parties with a "proper interest in issues or persons subject to an investigation within its regulatory remit" to discuss the proposed investigation with the other party, and "determine whether further information exchange of information is appropriate". Where both parties have a proper interest in issues, they will agree the most appropriate steps to deal with the matter, such as identifying a "lead party" or "working in parallel".

222. In our view, these existing mechanisms will mitigate the potential risk of regulatory conflict for regulated persons, who are also regulated by another approved regulator.

223. The principle external regulatory body to be affected by our reforms is BTAS as the changes will impact BTAS processes, powers and resources, once introduced. We are continuing to engage and work directly with BTAS to ensure operational readiness for implementation in February 2027.

IV. Consultation and Engagement (rule 11)

Provide detail of the consultation and engagement process undertaken when developing the proposals leading to the alterations. This must include detail of any responses/feedback along with information on your consideration of that, and any consequential changes to the alterations. This section must also provide an explanation of why the approach taken to consultation and engagement was proportionate in the circumstances.

[7] Available here. See, in particular, paragraphs 14-18.

224. The review of the Enforcement Regulations (specifically Sections A to D of Part 5 of the Handbook) follows the Enforcement Review by Fieldfisher LLP in 2024, which made numerous recommendations as to the BSB's enforcement processes, including the approach of the regulations. The Board accepted those recommendations in full.

225. In identifying the proposals for change to our enforcement regulations, we have drawn on the outcome of the Enforcement Review, whilst also considering the experience of colleagues applying the Enforcement Regulations in practice. We also sought the views of other internal and external stakeholders, considered practice across comparable professional regulators, especially in the legal sector. We engaged with and consulted an expert Stakeholder Reference Group, which comprised representatives from the profession, other legal regulators, consumer experts, and members of BTAS and IDB panels.

226. Our changes were further informed by internal workshops and a review of relevant case law. We also drew insight from the practical experience of colleagues at the BSB, as well as logs maintained by staff which detailed operational issues in respect of the current regulations in Part 5 of the Handbook.

227. We ran the first public consultation between 3 July 2025 and 15 October 2025. The document is available here (and at Annex C). The first consultation focused on 'in-principle' proposals for change, rather than definitive proposals and drafting. The changes ranged from substantial alterations to approach or process, to changes that seek to codify or clarify existing practice. It was accompanied by a press release and we also held a webinar to inform stakeholders of the proposals and the consultation.

228. We received eight responses to the consultation. Two responses were from individual barristers, one was from a chambers' representative, four were from representative bodies, and one was from an individual member of the public.

229. On 1 December 2025, we published a short early feedback statement in relation to one proposal, which concerned a change to our approach to the communication of detailed, written allegations, before any regulation changes come into effect (available here and in Annex D). In the statement, we communicated clearly to the profession and the public that the BSB would introduce this change, prior to formally amending the regulations.

230. On 2 April 2026, we published the full Consultation Feedback Statement on the outcome of the first consultation, which summarised the responses received and our conclusions and next steps (in Annex D). Having considered the feedback, we decided to move forward with the majority of the in-principle proposals that we consulted on. However, in light of the feedback received, we also made a number of amendments to our proposals that was ultimately reflected in the drafting of the new regulations and abandoned a small number of proposals, including the proposal to move from five to three-person panels in disciplinary cases.

231. We then held a second public consultation from 1 May 2026 to 17 July 2026 (Annex E).

This second consultation sought views from stakeholders on the draft regulations and a small number of additional proposals for change. As part of the consultation, we produced new draft regulations, replacing Parts 5A to D of the BSB Handbook, which sought to implement the settled policy decisions. We also took the opportunity to streamline the regulations to ensure they are better organised, simplified, use plain English and reflect best regulatory practice. The full set of EIAs for our proposals was published alongside the consultation, on which we also sought views from respondents.

232. We published the second consultation on the BSB website with an accompanying press release.

233. We received fourteen responses to the consultation: nine responses were from individual barristers, one was from a judge and five were from representative bodies and other organisations.

234. A summary of the consultation responses is set out in our Second Consultation Feedback Statement, which we recently published on the BSB website (and at Annex F).

235. Throughout the process, we have regularly engaged with BTAS, as a key stakeholder to the enforcement process. We note that BTAS were formally members of the Stakeholder Reference Group and also responded to both public consultations, as did COIC. In addition, we have held regular working meetings with BTAS to help shape our proposals and ensure that they are effective from an operational and practical perspective. This has been an iterative process and has informed some of the operational changes, for example ensuring that the updates to our guidance for decision-makers are accurate and workable, including the proposed BTAS Policy on non-party access to court documents.

V. & VI. Impact Assessment (rule 12)

a) Equality impact assessment: Provide an assessment of the impact of the alterations on persons with protected characteristics as defined by section 4 of the Equality Act 2010. Please include in this section details of any positive impacts as well as any adverse impacts, measures that will be implemented to mitigate any adverse impacts, and on why any remaining adverse impact is proportionate, reasonable, and not prejudicial to the regulatory objectives overall. To include details on the consideration given to how the alterations advance equality of opportunity between persons who share protected characteristics and persons who do not and support the aim of dismantle barriers to a diverse and inclusive profession where relevant.

b) Impact on regulated persons, consumers and the public interest

Provide an assessment of the impact of the alteration or alterations on the conduct of legal services by regulated persons, consumers and the public interest. Please include in this section details of any measures to mitigate any adverse impacts. Where adverse impact remains, an explanation of why this is proportionate, reasonable and will not be prejudicial to the regulatory objectives overall.

Where significant alterations to the regulatory framework are proposed, an approved regulator must undertake a proportionately more detailed assessment of the potential impact on the regulated persons, consumers and the public interest.

a) Equality impact assessment

236. While we have not identified significant equality concerns directly arising from the proposals, we recognise that individuals with certain protected characteristic are disproportionately represented in the BSB's disciplinary processes[8]. We are committed to ensuring that the new regulations and approach do not exacerbate these disparities for groups with certain protected characteristics.

237. Above, we briefly summarise some of the more significant equality impacts of our Handbook changes, particularly when the impacts identified have now been mitigated via changes to our initial proposals, and / or where the changes also intersect with our regulatory objectives.

238. Fuller, standalone EIAs of our changes were also produced as part of this project. In this standalone assessment, the projected impacts on those with protected characteristics are examined in more detail, and mitigations summarised. This document was published on our website (accessible here) as part of the second consultation and is also available in Annex G.

239. As part of the second consultation paper, we sought feedback on our EIAs for the proposals. In light of feedback received from stakeholders, we updated the EIAs for the proposals relating to allegations, powers to reconsider post investigative decisions, costs, the interim order listing process, service by email and non-party access to tribunal documents. These updated assessments were published as part of the BSB's response to the second consultation and are also available at Annex F.

b) Impact on regulated persons, consumers and the public interest

240. These reforms potentially impact on all persons who are "applicable persons" – which can include both practising and unregulated barristers, BSB entities, current or former "BSB regulated persons" and employees or managers of the above. More narrowly, the impact will more tangibly fall on those persons who are subject to a report regarding a potential breach of the BSB Handbook. In 2023/2024, this involved 1,724 reports of potential breaches, 108 cases then followed up for investigation, of which 81 were investigated and 39 determined by a DT. Those applicable persons significantly directly affected by many of our key reforms (39) are therefore few in number. However, because these reforms directly impact on the very process of assessing and filtering reports into cases determined by a DT, the 1,724 figure quoted above is arguably a more useful benchmark for considering potential impact in a typical year.

241. Although the Handbook changes are principally directed at improving the processing of reports about applicable persons, we have taken account of the interests of consumers and other third parties involved in the disciplinary process, including witnesses. The reforms are notably intended to improve the experiences of those participating in the

[8] For more information, see BSB Regulatory Action Diversity Analysis, February 2025. Available here.

disciplinary process – in particular, by introducing a presumption of anonymity for witnesses involved in sensitive cases with allegations of a sexual nature and adopting a more inclusive and flexible approach for special measures to give evidence. More broadly, consumers and witnesses should benefit from a disciplinary process that is clearer, more proportionate, transparent and avoids unnecessary delay and expense. This will support their experience in the disciplinary process as well as their overall experience of accessing justice.

242. The public interest is served by an overall approach to enforcement that is faster, simpler, fairer and more transparent. The reforms are intended to strengthen the effectiveness of the regulatory system, protect and promote better regulation and increase confidence in the regulation of the profession. By improving public confidence that professional misconduct is being handled appropriately, effectively and transparently, while protecting the public interest, the reforms will strengthen confidence in the BSB's regulatory system.

VII. Evaluation and monitoring

Provide full details on the evaluation and monitoring the approved regulator will undertake to assess the impact of the alterations once they have been implemented. This should include specific plans and timescales for carrying out the monitoring and evaluation work.

Monitoring plans

243. Once implemented, we will actively monitor the operation and compliance with the new Enforcement Regulations. This will include:

a. Tracking the operation of the new enforcement process, including the number of cases entering and concluding at each stage, the number progressing to disciplinary action and the time taken for cases to progress through each stage.
b. Monitoring the impact of the new arrangements on barristers with protected characteristics, including case outcomes and progression through the enforcement process, where relevant data is available. We will also monitor the diversity of DT and IDB panels, following the introduction of measures to broaden the pool of panel members.
c. Engaging with stakeholders, including BSB staff, BTAS and other key users, to gather feedback on the initial implementation and their experience of the new enforcement process, including its fairness, transparency, efficiency and effectiveness, as compared to the current regulations and processes.

244. We have already implemented one of the proposed changes to our enforcement process in practice since 1 December 2025, without changing the existing regulations. In summary, this proposal was to defer the point at which detailed, written allegations are formulated and sent to the barrister for comment until later in the investigation, once relevant information has been gathered. We have been monitoring the operation of this change since implementation, including by recording the percentage of cases that are closed during the enquiry phase, before disciplinary action has commenced. We will use this data to compare outcomes under the new arrangements with data from the previous process and assess the impact of the change.

245. We are also working with BTAS to develop new, ongoing key performance indicators to measure efficiency and delay across the end-to-end enforcement process, which will supplement the new powers conferred in the proposed regulations. These will support our ongoing monitoring of the time taken for cases to progress through the different stages of the process and identify potential delays or barriers. We recognise that there will be a limitation in drawing conclusions from this data until a sufficient number of cases have progressed through the new process.

246. We will monitor activity on an ongoing basis. Early indicators will be reviewed to identify any areas requiring further intervention, support or changes to the operation of the new arrangements. The information gathered through this ongoing monitoring will also provide the evidence base for the formal evaluation described below.

Evaluation plans

247. Our first formal evaluation is planned for two years after the implementation date. A two-year period is intended to allow sufficient time for cases progressing under the new Enforcement Regulations to complete the end-to-end enforcement process and for the evaluation to capture the impact of the new regulations across the different stages of the process. In our view, this timescale is appropriate, given that the current service target for cases from the point of referral to the DT until the finalisation of the report of finding and/or sanction is 44 weeks. We note that this service target is not always met and there are also a number of stages in the enforcement process before referral. This means the duration of an end-to-end enforcement case can often extend beyond 44 weeks.

248. The evaluation will assess whether the regulatory changes have met their intended aims and delivered the anticipated regulatory outcomes. It will focus on:

a. *Effectiveness of the new enforcement process:* we will assess whether the new Enforcement Regulations have resulted in a more effective and timelier enforcement process and whether cases are progressing through the process as intended. This will include reviewing:
   i. The number of cases entering each stage of the enforcement process;
   ii. The number of cases concluded at each stage and the number progressing to disciplinary action;
   iii. The time taken for cases to progress through each stage of the process;
   iv. The percentage of cases closed during the enquiry phase, including comparison with data from the previous process, to assess the impact of the change to our approach to investigations, which has been effective since1 December 2025;
   v. Whether there are any significant changes in case progression or outcomes, compared with the position before implementation, where sufficiently comparable baseline data is available; and
   vi. The resource and cost implications of the new enforcement regulations, including available information on internal staff time and associated costs. We recognise that historical staff time-recording data is limited and that more reliable information is only available from the period commencing 2025-26 onwards. This limitation will be taken into account when assessing changes in resource use and the efficiency and proportionality of the new processes and arrangements.

b. *Impact on barristers with protected characteristics and equality:* the evaluation will consider

whether the new arrangements have had any unintended impacts on barristers with protected characteristics, including whether outcomes or progression through the enforcement process have worsened for particular groups. This will include considering outcomes for particular groups, where relevant data is available, such as the number of cases referred for disciplinary action and the number of cases closed at the enquiry stage.

We will also assess the impact of measures introduced to improve the recording of diversity of DT and IDB panels. In particular, we intend to improve reporting on the proportion of panels comprising members with protected characteristics. This will support our assessment of whether the changes are contributing to fair and effective decision-making.

c. *User experience of the enforcement process:* we are planning to assess the experience of those involved in the enforcement process and whether the new processes have improved perceptions of fairness, transparency, effectiveness and reduced delays. This will include:
   i. Surveying key stakeholders (including BSB and BTAS staff) to gather feedback on their experience of the new process;
   ii. Considering whether stakeholders perceive the process to be, fair, transparent, efficient and effective and whether it appropriately serves the public interest.
   iii. Considering any qualitative feedback or other evidence father through ongoing stakeholder engagement.

d. *Impact on the profession and regulatory engagement:* we will evaluate the impact of the new regulations on the profession, including how well the changes have been understood, implemented and embedded across different types of practice. This will include considering:
   i. The level of awareness and understanding of the new enforcement arrangements among barristers and other relevant stakeholders;
   ii. Any administrative burden or practical challenges arising from implementation;
   iii. The profession's engagement with the new enforcement process;
   iv. Whether any unintended consequences have emerged for particular groups or types of practice.

e. *Regulatory value and proportionality:* finally, we will assess whether the changes have delivered our regulatory ambitions. This includes whether the new Enforcement Regulations have improved the fairness, transparency, effectiveness and efficiency of the enforcement process and better supported the BSB in meeting its regulatory objectives and the public interest. We will also consider whether the balance between the regulatory benefits and the costs or burdens arising from the new arrangements are proportionate and whether any adjusted to the regulations, guidance or operational arrangements are needed.

249. Following evaluation, we will consider whether to maintain ongoing evaluations beyond the two-year mark, based on the findings of the above evaluation and any emerging risks or issues identified through our ongoing monitoring.

VIII. Any draft guide or policy that will support implementation of the alterations

These documents can give necessary context to how the alterations will work in practice which may be important in assessing their impact on the regulatory objectives, and against the refusal conditions. It also may be the case that these documents may fall within the meaning of regulatory arrangements and having them enclosed with an application will assist in determining this.

250. As set out in our Consultation Feedback Statements, we will produce a number of new and updated guidance and policy documents to support implementation of the new Enforcement Regulations. In line with best regulatory practice, we intend to publish certain policies documents, where doing so will assist the public and the profession.

251. These documents are not intended to constitute regulatory arrangements in their own right or to create additional regulatory requirements. Instead, they provide detailed guidance to assist the profession, the public, decision-makers and other stakeholders, including BSB and BTAS staff, in understanding and applying the new Enforcement Regulations in practice and to support users in navigating the enforcement process.

252. Some of the guidance and policy documents are owned by BTAS and have been developed jointly with BTAS. In particular, our second consultation included a policy on non-party access to documents, on which we sought stakeholder feedback. We have taken that feedback into account in developing the detailed policy on facilitating and assisting non-parties (such as the media) to access tribunal documents, in furtherance of the open justice principle.

253. Current draft versions of our policy/guidance on non-party access to tribunal documents, BSB publication and special measures are enclosed with this application (Annex H). The updated documents will be published alongside the regulations, at the implementation stage (in early 2027).

254. There may be other consequential amendments to other BSB and BTAS documents, such as updating references to the existing regulations to refer to the new Enforcement Regulations. We have not attached all draft supporting policies and guidance given their number but can provide more on request, if deemed necessary.

List of Annexes to application

A. Proposed new Enforcement Regulations and transitional provisions
B. Spreadsheet tracker of changes to Part 5 of the Handbook
C. First public consultation paper
D. BSB's responses to the first public consultation
E. Second public consultation paper
F. BSB's response to the second public consultation
G. Equality Impact Assessments
H. Current draft versions of our policy and guidance documents