

# BAR STANDARDS BOARD

REGULATING BARRISTERS

## **Guidance on important changes to pupillage arising from the Legal Services Act 2007**

This guidance is intended to provide information to pupils, newly qualified barristers, pupil supervisors, and other individuals with responsibilities towards pupils and pupillage about the impact of the Legal Services Act 2007 ('the Act').

### **Background**

On 1 January 2010, a number of important provisions within the Act are expected to come into force. When the relevant provisions come into force, barristers will only be legally entitled to undertake a reserved legal activity if:

- a. they have been issued with a Practising Certificate (see Schedule 5 of the Act, which deems such barristers to be authorised for the transitional period), or
- b. they have been authorised to do so by the Bar Standards Board ('BSB') (see s20(6) of the Act).

Pursuant to s14 of the Act, it will become a criminal offence to undertake a reserved legal activity when not authorised. The punishment for such a conviction is imprisonment for up to 2 years and/or a fine.

### **What are 'reserved legal activities'?**

Pursuant to s12 (also see Schedule 2) of the Act, the reserved legal activities are:

- the exercise of a right of audience
- the conduct of litigation
- reserved instrument activities
- probate activities
- notarial activities, and
- the administration of oaths.

Giving legal advice (orally or written) that is outside the six reserved legal activities is not restricted by the Act. However, you will still be regulated by the Code of Conduct when undertaking non-reserved legal activities.

### **Why is it necessary to change the current arrangements?**

Historically, pupils and newly qualified barristers have not been issued with Practising Certificates. Instead, they are issued with Provisional Qualification Certificates ('PQC') on completion of their non-practising period of pupillage ('first six') and a Full Qualification

Certificate ('FQC') on completion of their practising period of pupillage ('second six'). These certificates have been treated as to allow pupils and newly qualified barristers to practise: the PQC certifies that the holder is entitled to practise with the permission of their pupil-supervisor; the FQC states that it acts as a Practising Certificate for the remainder of the Practising Certificate year.

The BSB has been advised that the PQC and FQC are not sufficient for the purposes of the Act to authorise individuals to undertake reserved legal activities. The BSB has therefore devised new arrangements to issue Practising Certificates to pupils and to newly qualified barristers to ensure that those who are entitled under the Code to exercise such activities are able to do so from 1 January 2010 without committing a criminal offence.

### **What does this mean for me?**

This means that, from 1 January 2010, if you do not have a Practising Certificate, it will be a criminal offence to undertake a reserved legal activity. More specific information about how this affects particular individuals can be found below.

### **What does this mean for first six pupils?**

There is no change for those who are undertaking their first six, as first six pupils have never been entitled under the Code to exercise a right of audience. However, there is an important change for those who have finished their first six and plan to commence a second six. In previous years, those who have completed their first six were able to commence their second six and begin exercising a right of audience on the following day.

As explained above, from 1 January 2010 it will become a criminal offence to exercise a right of audience without having in force a Practising Certificate. The BSB will issue Practising Certificate to those who have done the following:

- completed a first six
- submitted to the BSB a satisfactorily completed certificate verifying completion of the first six, and
- registered a second six with the BSB.

Until you have done so, you will not be able to obtain a Practising Certificate and therefore will not be able to exercise a right of audience as part of your second six.

As a result of the legislation, there is likely to be a short delay between completion of your first six and when you are able to exercise a right of audience as part of your second six. In order to reduce the delay, we urge you to submit to the BSB the requisite certificate signed by your pupil supervisor as soon as possible on successful completion of your first six.

If your pupil supervisor is unavailable to sign your certificate, you can ask your head of chambers to sign it, so long as you indicate on your form who your pupil supervisor was for the relevant period. Additionally, you can email us a scanned copy of the signed form or fax it to us to prevent any potential delays in the post. The relevant contact details are below.

Once received, the BSB will process your forms as a matter of priority. If the information provided is satisfactory, we will send you an e-mail (provided that we have your e-mail

address) to confirm that you are now authorised to exercise a right of audience. We will then pass your details to the Bar Council's Records Office so that you can be issued with a Practising Certificate. You will still receive a PQC which will certify that you have completed your first six; however, the PQC does not give you any practising rights.

In order to prevent delay due to our internal administration processes, the confirmation e-mail that will be sent to you will say that you are entitled to exercise a right of audience from the date of the e-mail – you do not need to wait until you have received a physical Practising Certificate. We hope that these arrangements will keep the delay to a minimum – it is therefore important that you ensure that we have an up-to-date e-mail address for you.

We urge you to ensure that your pupil supervisor and clerks are aware of these changes, as it means that you will not be able to exercise a right of audience as part of your second six until you have been advised that you are authorised to do so.

### **What does this mean for second six pupils?**

Second six pupils will require a Practising Certificate from 1 January 2010 in order to be legally entitled to exercise a right of audience. Those who are undertaking a second six pupillage as at 1 January will automatically be sent a Practising Certificate.

Those who are due to commence a second six after 1 January should read the above guidance for first six pupils. In order to obtain a Practising Certificate, you will need to submit to the BSB a signed certificate that verifies your successful completion of your first six and have registered a second six with the BSB. Once you have done so, you will be issued with a Practising Certificate.

The Practising Certificate that will be issued to second six pupils will be valid until 31 December 2010, pursuant to the Practising Certificate Regulations at Annex D to the Code of Conduct. The Practising Certificate is being issued to second six pupils in order to allow them to exercise a right of audience without committing a criminal offence pursuant to s14 of the Act. However, it is important to note that a number of restrictions will still apply to second six pupils under the Code.

Paragraph 802 of the Code only allows second six pupils to supply legal services as a barrister and exercise a right of audience if they have the permission of their pupil-supervisor or head of chambers. Therefore, although the Practising Certificate that is issued to you will be for the whole of 2010, you are only able to practise in accordance with the Code for the duration of your second six and so long as you have the permission of your pupil supervisor or head of chambers.

See the guidance below for information about what to do when you finish your second six.

### **What does this mean for newly qualified barristers?**

On completion of your second six, you will need to promptly submit to the BSB a certificate signed by your pupil supervisor confirming that you have satisfactorily completed your second six, along with a completed Notification of Status form. If your pupil supervisor is

unavailable to sign your certificate, you can ask your head of chambers to sign it, so long as you indicate on your form who your pupil supervisor was for the relevant period.

After you have submitted the requisite forms to us, we will send you an FQC which will certify that you have completed your second six. In order to commence practice after your second six, you must return a completed Notification of Status form confirming that you have commenced practice and providing your practice address. If you do not return the Notification of Status form, you may be in breach of paragraph 202(d) of the Code of Conduct, which states that a barrister may practise only if he has provided in writing details of his current practice address and telephone number.

Provided you have submitted to the BSB the requisite certificate confirming satisfactory completion of your second six, and you have returned a Notification of Status form indicating that you are practising, you will be entitled to commence practice as a barrister. The Practising Certificate that was issued to you whilst you were undertaking your second six will continue to be valid until the end of 2010.

Before your Practising Certificate expires, you will be sent annual notices to renew your Practising Certificate and you will be informed of the requisite fee to pay in order to do so.

### **What does this mean for pupil supervisors?**

All pupil supervisors should be aware of the changes in the legislation and the arrangements put in place by the BSB to issue second six pupils with Practising Certificates. Pupil supervisors should be aware that until a pupil has complied with the requirements explained in this guidance and been issued with a Practising Certificate, the pupil will not be legally entitled to exercise a right of audience. It is important that you inform the clerks of these changes so that they do not book a hearing for a pupil who has not yet been authorised to exercise a right of audience.

### **Who do I contact with questions?**

If you have any questions about these changes, or need to submit any certification forms, please contact:

Pupillage Compliance Team  
Bar Standards Board, 289-293 High Holborn  
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DX 240 LDE  
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