

# BAR STANDARDS BOARD

REGULATING BARRISTERS

## **BSB Handbook amendments resulting from the UK's exit from the EU**

The below changes to the [BSB Handbook](#) will come into force at the end of the transition period following the UK's exit from the EU. The changes affect Registered European Lawyers (RELs) practising at the Bar of England and Wales, and European lawyers seeking to be admitted to the Bar. They also implement provisions relating to the Swiss Citizens' Rights Agreement, which was agreed by the UK and Switzerland in 2018. The new rules will apply from the end of the transition period, expected to take effect at 11pm GMT on 31 December 2020.

### **PART 6: DEFINITIONS**

*Certificate of Good Standing* - means:

(a) in relation to a *person* authorised by another *Approved Regulator* or by a *Qualified Foreign Lawyer*, a certificate issued by the *Approved Regulator* or the professional body or other authority responsible for regulating the profession of which the *person* concerned is a member attesting that the *person* concerned:

(i) is of good character;

(ii) has not been the subject of a *Bankruptcy Order* or *Directors Disqualification Order* nor entered into an individual voluntary arrangement with creditors; and

(iii) has not been prohibited and is not currently suspended from *practising* on account of serious professional misconduct or the commission of a criminal offence;

(b) in relation to a *Qualified ~~European~~ Swiss Lawyer*, evidence ~~of the kind referred to in Regulation 9(2) of the European Qualification Regulations~~, that the *person* concerned:

(i) is of good character;

(ii) has not been the subject of a *Bankruptcy Order* or *Directors Disqualification Order* nor entered into an individual voluntary arrangement with creditors; and

(iii) has not been prohibited and is not currently suspended from *practising* on account of serious *professional misconduct* or the commission of a *criminal offence*

*employed barrister (non-authorised body)* - means a *practising barrister* who is employed: a) other than by a regulated entity; b) either: (i) under a contract of employment; or (ii) under a written contract for services which is for a determinate period (subject to any provision for earlier termination on notice); or (iii) by virtue of an office under the Crown ~~or in the institutions of the European Union~~; and who supplies legal services as a *barrister* in the course of their employment

*English Law* - includes international law ~~and the law of the European Communities~~

*Establishment Directive* – **definition removed**

*European lawyer* - means a *person* who is a national of a *Member State* and who is authorised in any *Member State* to pursue professional activities under any of the professional titles appearing in article 2(42) of the *European Communities (Lawyer's Practice) Order 1999 Regulations 2000 or within the Services of Lawyers and Lawyer's Practice (Revocation etc.) (EU Exit) Regulations 2020*, but who is not any of the following:

a) a *solicitor* or *barrister* of England and Wales or Northern Ireland; or

b) a *solicitor* or advocate under the law of Scotland

*home professional title* – means, in relation to a *European lawyer*, the professional title or any of the professional titles specified in relation to their *home State* in article 2(42) of the *European Communities (Lawyer's Practice) Order 1999 Regulations 2000 (as amended) or within the Services of Lawyers and Lawyer's Practice (Revocation etc.) (EU Exit) Regulations 2020* under which they are authorised in their *home State* to pursue professional activities

*home regulator* - means the body in a *Member State* which authorises a *European lawyer* to pursue professional activities under any of the professional titles appearing in article 2(42) of the *European Communities (Lawyer's Practice) Order 1999 Regulations 2000 (as amended) or within the Services of Lawyers and Lawyer's Practice (Revocation etc.) (EU Exit)*

[Regulations 2020](#) and, if the *European lawyer* is authorised in more than one *Member State*, it shall mean any such body

*member state* - means a state which is a member of the European Union, [the European Economic Area or Switzerland](#)

*practice* - means the activities, including business related activities, in that capacity, of:

a) a *practising barrister*;

~~b) a barrister exercising a right of audience in a Member State other than the United Kingdom pursuant to the Establishment Directive, or the European Communities (Lawyer's Practice) Regulations 2000;~~

~~b~~e) a *BSB entity*;

~~c~~d) a *manager of a BSB entity*

~~d~~e) an employee of a *BSB entity*

“practise”, “practising” and “practised” should be construed accordingly

*Registered European Lawyer* – means ~~a European Lawyer who:~~

~~a) a *European lawyer*, who retains registration as such, pending a decision on an application to the *Bar Standards Board* for admission to the *Bar* made before the end of the *Transition Period* and was registered by the *Bar Standards Board* and by an *Inn* in accordance with *Section 3D* before the end of the *Transition Period*; or~~

~~b) a *qualified Swiss lawyer* who applied for registration as such under the *Swiss Citizens' Rights Agreement* and was registered continuously by the *Bar Standards Board* and by an *Inn* in accordance with *Section 3D* before 1 January 2025; or~~

~~c) for the purposes of *Part 5 of the Bar Standards Board Handbook* prior to the end of *Transition Period* was registered as such by the *Bar Standards Board* and by an *Inn* in accordance with *Section 3.D*.~~

*Qualified European lawyer* – **definition removed**

*Qualified lawyer* – means a *person* who is authorised to *practise* by another *Approved Regulator*, a *Qualified ~~European Lawyer~~ Swiss Lawyer* or a *Qualified Foreign Lawyer*

*Qualified Swiss Lawyer* – means a person with the relevant qualifications or professional title within the meaning of Regulation 6 of the Services of Lawyers and Lawyer’s Practice (Revocation etc.) (EU Exit) Regulations 2020

*Swiss Citizens’ Rights Agreement* – means an agreement between the United Kingdom and Switzerland which preserves certain rights of citizens of each country

*Transition Period* – means the period agreed in the UK–EU Withdrawal Agreement in which the UK is no longer a member of the European Union but remains subject to European Union regulations, including qualification regulations. The transition period ends at 11pm GMT on 31 December 2020

## **PART 2: CODE OF CONDUCT**

### **D5 ~~CROSS-BORDER ACTIVITIES BETWEEN WITHIN CCBE STATES THE EUROPEAN UNION AND THE EUROPEAN ECONOMIC AREA~~**

[NB only title changing]

## **PART 3: SCOPE OF PRACTICE, AUTHORISATION AND LICENSING RULES**

### **Section B: Scope of Practice rules**

rS22

In Rule rS20 and Rule rS21 above, the references to “qualified person” mean the following:

Supply of legal services to the public – qualified person

.1 Where you are a *barrister* intending to supply legal services to the public, a *person* shall be a qualified person for the purpose of Rule rS20 if they:

.a have been entitled to practise and have practised as a *barrister* (other than as a *pupil* who has not completed *pupillage* in accordance with the Bar Qualification Rules) or as a person authorised by another *Approved Regulator* for a period (which need not have been as a

*person* authorised by the same *Approved Regulator*) for at least six years in the previous eight years; and

.b for the previous two years have made such practice their primary occupation; and

.c are not acting as a qualified person in relation to more than two other people; and

.d has not been designated by the *Bar Standards Board* as unsuitable to be a qualified person.

The exercise of a right of audience – qualified person

.2 Where:

.a you are a *barrister* exercising a right of audience in England and Wales, a *person* is a qualified person for the purpose of Rule rS20 if they:

.i have been entitled to practise and have practised as a *barrister* (other than as a *pupil* who has not completed *pupillage* in accordance with the Bar Qualification Rules) or as a *person* authorised by another *Approved Regulator* for a period (which need not have been as a person authorised by the same *Approved Regulator*) for at least six years in the previous eight years; and

.ii for the previous two years:

(1) have made such practice their primary occupation; and

(2) have been entitled to exercise a right of audience before every court in relation to all proceedings; and

.iii are not acting as a qualified person in relation to more than two other people; and

.iv have not been designated by the *Bar Standards Board* as unsuitable to be a qualified person. ~~;~~

~~.b you are a barrister exercising a right of audience in a Member State other than the United Kingdom pursuant to the Establishment Directive, or in Scotland or Northern Ireland pursuant to the European Communities (Lawyer's Practice) Regulations 2000, a person shall be a qualified person for the purposes of Rule rS20 if they:~~

~~.i have been designated by the Bar Standards Board as possessing qualifications and experience in that state or country which are equivalent to the qualifications and experience required by Rule rS22.2.a.i and rS22.2.a.ii above; and~~

~~.ii are not acting as a qualified person in relation to more than two other people; and~~

~~.iii have not been designated by the Bar Standards Board as unsuitable to be a qualified person.~~

The exercise of a right to conduct litigation – qualified person

.3 Where:

.a you are a *barrister* exercising a right to conduct litigation in England and Wales, a *person* is a qualified person for the purpose of Rule rS20 if they:

.i have been entitled to practise and have practised as a *barrister* (other than as a *pupil* who has not completed *pupillage* in accordance with the Bar Qualification Rules) or as a *person* authorised by another *Approved Regulator* for a period (which need not have been as a *person* authorised by the same *Approved Regulator*) for at least six years in the previous eight years; and

.ii for the previous two years have made such practice their primary occupation; and

.iii are entitled to conduct litigation before every court in relation to all proceedings; and

.iv are not acting as a qualified person in relation to more than two other people; and

.v have not been designated by the *Bar Standards Board* as unsuitable to be a qualified person;<sup>2</sup> or

~~.b you are a barrister exercising a right to conduct litigation in a Member State other than the United Kingdom pursuant to the Establishment Directive, or in Scotland or Northern Ireland pursuant to the European Communities (Lawyer's Practice) Regulations 2000, a person is a qualified person for the purposes of Rule rS20 and rS21 if they:~~

~~.i have been designated by the Bar Standards Board as having qualifications and experience in that state or country which are equivalent to the qualifications and experience required by Rule rS22.3.a.i and rS22.3.a.ii above; and~~

~~.ii are not acting as a qualified person in relation to more than two other people; and~~

~~.iii have not been designated by the Bar Standards Board as unsuitable to be a qualified person.~~

## Section C: Practising certificate rules

### C5: Amendment and revocation of practising certificates and litigation extensions

rS73 The *Bar Standards Board*:

.1 shall revoke a *practising certificate*:

.a if the *Barrister* becomes authorised to practise by another *approved regulator*;

.b if the *Barrister* or *Registered European Lawyer* is disbarred or suspended from practice as a *Barrister* or *Registered European Lawyer* whether on an interim basis under section D of Part 5 or otherwise under section B of Part 5;

.c if the *Barrister* or *Registered European Lawyer* has notified the *Bar Standards Board* that they no longer wish to have a *practising certificate*;

.d in the case of a *Registered European Lawyer*, where the individual no longer meets the eligibility requirements; and

.2 may revoke a *practising certificate*:

.a in the circumstances set out in Rule rS59; or

.b if the *Barrister* or *Registered European Lawyer* has given an undertaking to pay the appropriate *practising certificate fee* and fails to comply with that undertaking in accordance with its terms,

but in either case only after:

- (i) giving written notice to the relevant *Barrister* or *Registered European Lawyer* of the grounds on which the *practising certificate* may be revoked; and

- (ii) giving the relevant *Barrister* or *Registered European Lawyer* a reasonable opportunity to make representations.

## Section D: The registration of European Lawyers Rules

rS78 If you are a Qualified Swiss~~European~~ lawyer and wish to *practise* ~~on a permanent basis~~ in England and Wales under a *home professional title*, you may apply to the *Bar Standards Board* to be registered as a *Registered European Lawyer*. Such an application will be valid if it was made before 1 January 2025 and in accordance with the Swiss Citizens' Rights Agreement.

rS79 An application for registration must be made before 1 January 2025 in such form as may be prescribed by the *Bar Standards Board* and be accompanied by:

.1 a certificate, not more than three months old at the date of receipt of the application by the *Bar Standards Board*, that you are registered with the Competent Authority in Switzerland~~a Member State~~ as a lawyer qualified to *practise* ~~in that Member State~~ under a relevant~~Member State~~ Swiss professional title;

.2 a declaration that:

.a you have not on the grounds of misconduct or of the commission of a *criminal offence* been prohibited from *practising* in Switzerland~~your Member State~~ and are not currently *suspended* from so *practising*;

.b no *bankruptcy order* or *directors disqualification order* has been made against you and you have not entered into an individual voluntary arrangement with your creditors;

.c you are not aware of any other circumstances relevant to your fitness to *practise* under your *home professional title* in England and Wales; and

.d you are not registered with the Law Society of England and Wales, of Scotland or of Northern Ireland; and

.3 the prescribed fee.

## Section E: Entity application and authorisation

rS83 To be eligible for authorisation to *practise* as a *BSB entity*, you:

- .1 must have arrangements in place designed to ensure at all times that any obligations imposed from time to time on the *BSB entity*, its *managers*, *owners* or employees by or under the *Bar Standards Board's* regulatory



arrangements, including its rules and disciplinary arrangements, are complied with and confirm that the *BSB entity* and all *owners* and *managers* expressly consent to be bound by the *Bar Standards Board's* regulatory arrangements (including disciplinary arrangements);

- .2 must have arrangements in place designed to ensure at all times that any other statutory obligations imposed on the *BSB entity*, its *managers*, *owners* or employees, in relation to the *activities* it carries on, are complied with;
- .3 must confirm that, subject to the provisions of rS131, you will have in place, at all times, individuals appointed to act as a *HOLP* (who must also be a *manager*) and a *HOFA* of the *BSB entity*;
- .4 must confirm that you have or will have appropriate insurance arrangements in place at all times in accordance with Rule C76 and you must be able to provide evidence of those insurance arrangements if required to do so by the *Bar Standards Board*;
- .5 must confirm that, in connection with your proposed *practice*, you will not directly or indirectly hold *client money* in accordance with Rule C73 or have someone else hold *client money* on your behalf other than in those circumstances permitted by Rule C74;
- .6 must confirm that no individual that has been appointed or will be appointed as a *HOLP*, *HOFA*, *manager* or employee of the *BSB entity* is disqualified from acting as such by the *Bar Standards Board* or any *Approved Regulator* pursuant to section 99 of the *LSA* or otherwise as a result of its regulatory arrangements;
- .7 must confirm that you will at all times have a *practising address* in England or Wales;
- .8 must confirm that:
  - .a if you are an *LLP*, you are incorporated and registered in England and Wales, Scotland or Northern Ireland under the Limited Liability Partnerships Act 2000;
  - .b if you are a *Company*, you are:  
  
incorporated and registered in England and Wales, Scotland or Northern Ireland under Parts 1 and 2 of the Companies Act 2006; ~~or~~  
  
~~incorporated in an *Establishment Directive* state and registered as an overseas company under Part 34 of the Companies Act 2006; or~~

~~incorporated and registered in an *Establishment Directive* state as a *societas Europaea*~~

9. must confirm that at least one *manager* or employee is an *authorised individual* in respect of each *reserved legal activity* which you wish to provide;
10. must confirm that you will pay annual fees as and when they become due.

#### **PART 4: BAR QUALIFICATION RULES**

##### Exemptions

rQ14 The following categories of individual fall within this Rule:

- .1 an individual who has been granted rights of audience by an *approved regulator* and who is entitled to exercise those rights in relation to all proceedings in all courts of England and Wales;
- .2 subject to Rule rQ15, an individual who has been granted rights of audience by an approved regulator and who is entitled to exercise those rights in relation to either all proceedings in the High Court or all proceedings in the Crown Court of England and Wales (but not both);
- .3 a Barrister of Northern Ireland who has successfully completed *pupillage* in accordance with the rules of the Bar of Northern Ireland;
- .4 subject to Rule rQ16, a *Qualified SwissEuropean Lawyer*.

rQ16 Subject to Rules rQ18 to rQ20, the *BSB* may require a *Qualified SwissEuropean Lawyer* to pass a *Bar Transfer Test* if the *BSB* determines that:

- .1 the matters covered by the education and training of the applicant differ substantially from those covered by the academic legal training and the vocational training; and
- .2 the knowledge acquired by the applicant throughout their professional experience does not fully cover this substantial difference.

*Registered European Lawyers*

rQ18 [To the extent provided in the Swiss Citizens' Rights Agreement](#), ~~T~~the BSB may not require an applicant who is a *Registered European Lawyer* and who falls within Rule rQ20 or rQ21 to pass a *Bar Transfer Test* unless it considers that the applicant is unfit to practise as a *Barrister*.

rQ20 To fall within this Rule an applicant must have:

- .1 for a period of at least three years been a *Registered European Lawyer*,  
and
- .2 for a period of at least three years effectively and regularly pursued in England and Wales under a *Home Professional Title* professional activities in the law of England and Wales; ~~and~~

~~[.3 applied for admission to the Bar before 1 January 2025.](#)~~

rQ21 To fall within this Rule an applicant must have:

- .1 for a period of at least three years been a *Registered European Lawyer*,  
and
- .2 for a period of at least three years effectively and regularly pursued in England and Wales professional activities under a *Home Professional Title*;  
and
- .3 for a period of less than three years effectively and regularly pursued in England and Wales under a *Home Professional Title* professional activities in the law of England and Wales; ~~and~~

~~[.4 applied for admission to the Bar before 1 January 2025.](#)~~

Partial exemption

Temporary call to the *Bar of Qualified Foreign Lawyers*

rQ26 The BSB will issue a *Temporary Qualification Certificate* if the applicant submits to the BSB:

- .1 evidence which establishes that the applicant is a *Qualified [SwissEuropean](#) Lawyer* or falls within Rule Q24.2;

.2 a *certificate of good standing*; and

.3 evidence which establishes that a *professional client* wishes to instruct the applicant to appear as counsel in the case or cases for the purposes of which the applicant seeks temporary call to the *Bar*.