

Amendments to the Bar Standards Board Handbook

For approval by the Legal Services Board

This application is made in accordance with the requirements set out in the Legal Services Board's Rules for Rule Change applications. The BSB wishes to provide the information below to support its application.

Any queries about this application should be made to:

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1 The proposed alterations

- 1.1 We are proposing four new reporting requirements for barristers with regards to Authorisation to Practise (AtP). This will be done through the new My Bar portal which is being developed, aimed at making the AtP process more efficient. These new requirements are set out in more detail below:

Practice areas

- 1.2 Barristers who are renewing their practising certificates will have to declare their areas of practice and the percentage of income attributable to each area for the last full calendar year. This will not affect those barristers applying for their first practising certificate or who are returning after a break as we want to capture data that is accurate, and are therefore requesting information from the last 12 months.
- 1.3 For those barristers who are renewing their practicing certificate and are registered to undertake public access work, a declaration of the percentage of income attributable to public access work in the last full calendar year. This will not affect those barristers applying for their first practising certificate or who are returning to practice following a break.

Registration of Youth Court work

- 1.4 Barristers who are completing AtP would need to register if they are undertaking, or in the last 12 months have undertaken work in the Youth Court. This would apply to

those barristers completing the AtP process, or pupils applying for their provisional practising certificate.

- 1.5 We are also proposing an additional rule requiring barristers who did not register when completing AtP to do so within 28 days after undertaking this work (when this is outside of the AtP period).
- 1.6 During the above processes, barristers register that they are undertaking or have undertaken Youth Court work and also that they are competent against the Youth Proceedings Competences. This document outlines the key competences that barristers who work with young defendants must meet, both before accepting instructions and during Youth Court proceedings. A copy of these competences is attached at Annex D.
- 1.7 Barristers will be able to unregister at any time by using their My Bar account. This is important to ensure that only barristers who are currently, or intending to undertake this work, are registered as doing so, ensuring our supervisory approach can be effective.

Money Laundering, Terrorist Financing and Transfer of Funds (Information on the Payer) Regulations 2017 ('the Regulations')

- 1.8 Barristers who are renewing their practising certificate will need to declare:
 - a. whether they are undertaking, have current instructions or in the last 12 months have undertaken, work which falls within the scope of paragraphs 11 (d), 12 (1)(a) to (e) and (2) (a) to (d) of the Regulations; and if they do fall within the scope of the Regulations, to declare¹:
 - i. whether, with reference to paragraphs 26 (8) and (11) of the Regulations, they have been convicted of a "relevant offence"²; and
 - ii. that they will obtain a basic disclosure check and provide the result to the BSB upon request.

Unique email address

1 11(d) – These regulations set out the definition of a tax advisor

12 (1) (a) to [e] - These regulations set out the definition of an independent legal professional and the services they provide in order to fall within the scope of the Regulations

12 (2) (a) to (d) – These regulations set out the definition of a Trust and Company Service Provider (TCSP) and the services they provide in order to fall within the scope of the Regulations

2 26 (8) - Relates to whether the applicant has been convicted of a relevant offence

26 (11) – Relates to whether the beneficial owner has been convicted of a relevant offence

- 1.9 We are proposing to introduce a rule that would require barristers to register their My Bar account with a unique email address so that only they could view and edit their information. This may be the barrister's direct professional contact email address, or an alternative email address which is unique to them.
- 1.10 The rules which will give effect to the above proposals will state that if a barrister fails to comply with any of these new obligations then the BSB may refuse to issue a practising certificate.
- 1.11 The new rule in relation to Youth Court registration outside of AtP will be included within our Code of Conduct, under the duty to provide information to the BSB.
- 1.12 The rule changes are annexed to this application at **annex B**.

2 Details of the existing arrangements

- 2.1 The BSB prescribes a number of rules regarding the issuing of a practising certificate, including the circumstances under which the BSB may refuse to issue a practising certificate. These rules are set out in the Scope of Practice section (Part 3) of the BSB Handbook. The Code of Conduct section (Part 2) of the Handbook relates to the provision of information to the BSB.
- 2.2 Currently, we do not have any rules which would require barristers to provide practice area information or register if they are currently, or in the last 12 months have undertaken work in the Youth Court. Similarly, we do not have rules requiring barristers to declare whether their work will fall within the scope of the Regulations, or to provide a unique email address.

3 Our rationale for rule changes

Practice areas

- 3.1 Different parts of the BSB have identified a need to gather more structured information about barristers' areas of practice, supporting us in the risk-based regulation of the Bar. For example, ensuring we have up to date information about areas of practice will help the Supervision department update its risk profile of chambers and entities and therefore enable us to focus our resources at those which present the highest risk. Introducing a rule to ensure practice area information is provided is a necessary step as it will mean that our data is robust and useful as it is representative of the profession.

Registration of Youth Court work

- 3.2 In November 2015, the BSB and the Chartered Institute of Legal Executives published a review into the quality of advocacy in youth proceedings³. This suggested that

³ <https://www.barstandardsboard.org.uk/media/1712097/yparfinalreportfinal.pdf>

standards of advocacy were variable and that, as a result, some young people were being poorly represented. This may in turn impact on the public perception of legal services, which is one of the key risks that has been identified within our Risk Outlook and Index⁴.

- 3.3 The second phase of the programme of work relating to our youth proceedings advocacy review project is to require compulsory registration of those undertaking Youth Court work. Requiring registration will ensure that we are able to supervise these practitioners effectively, as we will hold up to date records on who is practising in this area, particularly as barristers will be able to unregister at any point throughout the year. We will also require barristers to declare their competency against the Youth Proceedings Competences which we published earlier this year, attached at annex D,

The Regulations

- 3.4 The new Regulations were introduced by the government in June 2017. We have been engaging with the Treasury and other supervisory bodies to determine the new measures necessary to ensure that we meet our obligations under the Regulations. Our compliance is contingent on us knowing which barristers are undertaking work which engages the Regulations and that they meet the requirements.

4 Why we wish to make the alterations

Practice areas

- 4.1 To be an effective risk and evidence-based regulator that works in the public interest, we need to have reliable information about the Bar and a good understanding of the dynamics of the market and of the way in which consumers engage with the market.
- 4.2 To do this, and to ensure we are targeted, proportionate and risk-based in our work, we need more robust and structured information on type and areas of practice.
- 4.3 The practice area information will also support our equality and diversity work as we will better understand the diversity of the profession at practice area level. For example, our Women at the Bar report showed that women are more likely to change their practising status in family law than men (23.4% of women and 7.6% of men)⁵. This will help us to understand not only the gender profile of family law practitioners, but also how our work can improve retention rates among female family law practitioners (e.g. having provision for shared parental leave in the Handbook).

4 Our Risk Index can be found on our website:

https://www.barstandardsboard.org.uk/media/1751667/bsb_risk_index_12pp_5.4.16_for_web.pdf

Our Risk Outlook can be found on our website:

https://www.barstandardsboard.org.uk/media/1751659/bsb_risk_outlook.pdf

5 Women at the Bar, Bar Standards Board, the Research Department, July 2016 [8]

- 4.4 Having a deeper understanding of the challenges facing different areas of practice, particularly where vulnerable consumers are concerned, will support our supervision work, as we will have information about which chambers and entities are undertaking work in high risk areas. This would result in a more targeted and proportionate supervision of the profession.
- 4.5 Having reliable information about areas of work updated annually will enable us better to track changes in the market and particular sectors. For example, we can better understand how those involved in family law work responded to cuts in legal aid, perhaps by diversifying to also practise housing and immigration law. Having this understanding could improve our approach to risk, as we can analyse how this is impacting clients and whether they are getting advice for all their legal needs or whether their access to justice is diminishing because they cannot afford legal advice (and are either litigants in person or not bringing legal action).
- 4.6 Finally, having practice area information will enable an effective review of the Continuing Professional Development (CPD) undertaken by barristers as we will be more informed about their learning objectives and activities.

Registration of Youth Court work

- 4.7 The BSB wants to make it compulsory for barristers working in the Youth Court to register as we believe this will help to improve standards of advocacy.
- 4.8 One way we believe this will be achieved is by using the information to inform how we supervise barristers. For example, we may choose to tailor our CPD monitoring to ensure that barristers who have registered that they will be undertaking this work are maintaining their competence in this area. Secondly, we also anticipate producing guidance at the end of 2017 which will provide support to those involved in these proceedings know what to expect from a barrister and what to do if things go wrong. This will include some information about the registration requirement to ensure it is understood by clients. Registration, and the publication of this on our register, will also enable solicitors, clients and third parties in the youth justice system to know whether the barrister is registered, and to report instances of poor advocacy or non-registration to us, supporting targeted engagement with barristers to improve their competency and ensure compliance. In addition to the above, we anticipate the declaration of competency against the Youth Proceedings Competences (at the point of registration) will help the standards of advocacy to increase as it requires barristers to declare they have the specialist skills needed for advocacy in the Youth Court.
- 4.9 We are not proposing that the registration appear on the practising certificate as this implies that the barrister must be registered with the BSB to undertake such work before the event. By not stating this on the practising certificate, we enable barristers to undertake this work, and to register after the event, so as not to frustrate the administration of justice by denying young people access to representation.

The Regulations

- 4.10 To ensure we comply with our obligations, we need to know which barristers are undertaking, are currently instructed or in the last 12 months have undertaken work which engages the Regulations. It means we can meet our obligations to:
- prepare risk profiles for relevant persons⁶;
 - provide HMRC with a list of Trust and Company Service Providers (TCSPs)⁷;
 - ensure that only those who are fit and proper persons are carrying out this work (this will be achieved by barristers having a basic disclosure check and completing an annual declaration that they have not been convicted of a relevant offence)⁸.
- 4.11 The Government is in the process of setting up a new oversight regulator for Money Laundering/Terrorist Financing for the accounting and legal sector supervisors, called the Office for Professional Body Anti-Money Laundering Supervision (“OPBAS”). The Government has indicated that the costs of OPBAS will be passed on and they have commenced consultation about how they will be apportioned. Collecting data about how many barristers are engaged in relevant work will enable us to ensure that OPBAS costs are allocated to the Bar proportionately⁹.

Unique email address

- 4.12 To ensure the new My Bar portal is secure, we consider it important that all barristers use a unique email address to access the system so that they have control over their information.
- 4.13 Having this information will also mean that we can contact barristers more efficiently as we will have a direct email address, rather than a generic one.

5 The regulatory objectives

Practice area information

- 5.1 Having practice area information will enable us to protect and promote the public interest, the interests of consumers and access to justice as it will support our understanding of the varied and diverse areas of legal work at the Bar, and the realities of practice and the difficulties facing consumers within each sector. Having this will enable us to take account of particular barriers and detrimental impacts and

6 17(4) of the Regulations

7 54 (2) (c) of the Regulations

8 To meet our obligations under 26 (8) of the Regulations

9 The government ran a consultation on the draft regulations for OPBAS from July to August 2017. At the time of this application, the government were continuing to analyse the responses. A further consultation has been launched about how the costs of OPBAS will be apportioned.

how we can address the risks in different sectors. For example, we could focus our thematic activity or research at high risk areas to inform our policy development work. It will also support our supervision of the profession as practice area is a key indicator we use to categorise chambers and entities as low, medium or high risk.

- 5.2 Collecting practice area information will enable us to track trends in the provision of services over time and therefore strengthen our understanding of how barristers respond to challenges. This could support a review of our rules to analyse whether they are having an adverse impact on competition.
- 5.3 It is not anticipated that collecting practice area information will have an adverse impact on the public's understanding of citizen's legal rights and duties, promoting and maintaining adherence to professional principles, supporting the constitutional principle of the rule of law, or encouraging an independent, strong, diverse and effective legal profession.

Registration of Youth Court work

- 5.4 Requiring the registration of barristers undertaking work in the Youth Court will protect and promote the public interest and the interests of consumers as young people will have access to quality advocates for the proceedings they are involved in.
- 5.5 By registering, barristers will declare their competency against the Youth Proceedings Competences. These competences explicitly state that the barrister must take care to ensure that the interests of their clients are taken into account and their needs met. Therefore, introducing the rule requiring registration will promote the interests of consumers and adherence to professional principles.
- 5.6 We also intend to publish guidance on the website which explains what it means for a barrister to be registered, thereby supporting clients to make an informed choice about their legal representation.
- 5.7 Our Equality Impact Assessments (EIAs) highlighted that the introduction of registration could adversely impact on access to justice as barristers could be dissuaded from remaining or entering this practice area if they perceive the regulation to be more stringent. We perceive this to be of low risk as the regulatory burden we are introducing is minimal.
- 5.8 A respondent to our consultation highlighted that requiring registration and publishing this on the public register will send a message that those undertaking work in the Youth Court are prepared to work for low levels of pay, thereby dissuading barristers from undertaking this work. We acknowledge the need for this work to be seen as a specialism and believe the promotion of registration and the Youth Proceedings Competences is a proportionate way to start achieving this, supporting access to justice as we do not place significant burdens on practitioners.
- 5.9 It is not anticipated that the rule requiring registration will have an adverse impact on encouraging an independent, strong, diverse and effective legal profession,

supporting the constitutional principles of the rule of law, promoting competition in the provision of service or increasing the public's understanding of citizen's legal rights and duties.

The Regulations

- 5.10 Requiring barristers to declare whether they are undertaking, have current instructions, or in the last 12 months have undertaken work which engages the Regulations will protect the public interest and the interests of consumers. This will be achieved as those who are undertaking this work will have to undertake a basic disclosure check and an annual declaration of whether they have been convicted of a relevant offence. Therefore, only those who meet the requirements of the Regulations are able to undertake this work.
- 5.11 There is a risk that these measures could dissuade barristers from undertaking this work, which could adversely impact on access to justice. However, as we are requiring a one off basic disclosure check, followed by an annual declaration, we believe this risk is minimal.
- 5.12 It is not anticipated that the rule requiring declarations in relation to the Regulations will have an adverse impact on encouraging an independent, strong, diverse and effective legal profession, supporting the constitutional principles of the rule of law, promoting competition in the provision of service, promoting and maintaining adherence to professional principles or increasing the public's understanding of citizen's legal rights and duties.

Unique email address

- 5.13 It is not anticipated that the rule requiring a unique email address will impact upon any of the regulatory objectives.

6 The better regulation principles

Transparency and accountability

- 6.1 Our Board considered and approved proposals to consult on collecting practice area information in March 2017 and details of this consultation can be found in section 12. The consultation is attached at Annex C.
- 6.2 The responses we received to this consultation have been analysed and the analysis published on our website and attached at Annex D. This analysis helped to inform our current proposals, which have been amended from our original proposals within the consultation. For example, we have refined the wording of our rules relating to Youth Court registration, to focus the scope on the Youth Court, rather than proceedings involving young people, and have clarified that barristers should register within 28 days of undertaking Youth Court work, rather than simply 'promptly', if they had not registered at AtP. We will also be considering whether we should extend the

scope of the rule requiring registration to also include the adult Magistrates, Crown and higher courts.

- 6.3 The consultation outlined our supervision and enforcement strategy with regards to registration, and our published enforcement strategy outlines our general approach to enforcement which will apply to the other rule change proposals. Specific details regarding the Regulations is provided below.

Proportionality

- 6.4 We acknowledge that some of the new rules require barristers to make a self-declaration. We already require barristers to do this for other rules within our Handbook and therefore have processes already in place to mitigate the risks which are inherent when requiring self-declarations.

Practice area

- 6.5 We have considered different policy options for requiring information on practice area, including maintaining the status quo and introducing the proposed rule. As there is a risk that without making this compulsory we lack robust, meaningful data about the market, thereby limiting our ability to be an effective risk based regulator, we felt that a mandatory declaration of practice area information was a proportionate way to mitigate this risk.
- 6.6 We are proposing that initially the practice areas are categorised in the same way as in the declarations made by the self-employed Bar to the Bar Mutual Indemnity Fund (BMIF) for a number of reasons. Firstly, the self-employed Bar is already required to take out insurance with BMIF, and declare their areas of practice, and percentage of income attributable to each area, when they renew their professional indemnity insurance each year. This means that barristers will be able to provide the same information and not have to understand and categorise their areas of practice in a new way, thereby not placing an onerous burden on the self-employed Bar.
- 6.7 BMIF are also available to provide support to barristers when they are categorising their areas of practice. By requesting the same information, the administrative burden on the BSB is reduced as we will not be required to provide advice and support to a number of the self-employed Bar when selecting practice areas.
- 6.8 We recognise that the employed Bar will not be accustomed to categorising their areas of practice in this way, and that the categories may not necessarily well reflect their areas of practice. We will therefore engage with respondents to the consultation who raised these issues, as well as Specialist Bar Associations, to explore this further. This could result in the creation of additional categories so that all work can be captured. Having consistent categories will enable direct comparison between the employed and self-employed Bar in the analysis of matters related to area of practice. This would be more difficult if practice areas were classified in a different way.

- 6.9 As the wording of the rule does not specify that our practice area categories mirror BMIF, we have the option of introducing a different system of categorisation in future, if this is considered necessary. We will keep this under review.
- 6.10 Some respondents to the consultation raised concerns around the enforcement of this rule. We recognise that practice area information may change over time and would expect barristers to submit the information about the nature of their practice in good faith. If it became apparent that the declaration had been incorrect, any decision about whether or not to take enforcement action would consider the circumstances, in particular whether there had been any deliberate dishonesty or non-cooperation with the regulator.

Registration of Youth Court work

- 6.11 We had two policy options in relation to Youth Court registration. The key difference was whether barristers would need to declare their competency against the Youth Proceedings Competences at the point of registration.
- 6.12 We decided that registration should require a declaration of competency due the comments from respondents to our consultation. Specifically, consumers and solicitors can have greater confidence that their barrister has the specialist skills and knowledge required for undertaking this work, thereby promoting Youth Court work as a specialism.
- 6.13 We anticipate restricting enforcement action to where there is persistent non-compliance with our rules. Our preferred approach would be to engage with the barrister to ensure compliance as we do not want the administration of justice to be frustrated.

The Regulations

- 6.14 To ensure compliance with the Money Laundering Regulations, we need to know which barristers are undertaking work within their scope. We believe this can be proportionately achieved by requiring barristers to make an annual declaration at AtP. .
- 6.15 In developing our rules and requirements, we have been in discussion with the Treasury about our current rule that barristers have a duty to report to the BSB if, inter alia, they are charged with an indictable offence or are convicted of a criminal offence¹⁰. Nevertheless, the Treasury require, as a minimum, that a one-off basic disclosure check is completed.
- 6.16 As the questions we will be asking at AtP are not considered exempted questions under the Rehabilitation of Offenders Act 1974, we can only require a basic

¹⁰ rC65.1-.8

disclosure check. This also enables the barrister autonomy over the process as they can request the check themselves, without having to liaise with a third party.

- 6.17 Following the identification of which barristers have declared their work has, or is engaging the Regulations, we will carry out an information gathering exercise by issuing a questionnaire to relevant chambers, BSB entities and sole practitioners to gather more information about the nature of the work they are undertaking and their policies, procedures and controls.
- 6.18 The questionnaires will enable the Supervision Department to assess which chambers, BSB entities and sole practitioners are low, medium or high risk in managing money laundering and terrorist financing risks.
- 6.19 Those barristers, chambers and entities that are assessed as low risk will not be subject to further engagement. Those that are rated medium and high risk will have further desk based engagement and/or be subject to supervision visits.
- 6.20 During this engagement, we will work with barristers, chambers and entities to ensure that controls are strengthened and we are assured that there is compliance with the Regulations.
- 6.21 The basic disclosure check is a one off requirement. Barristers who have already undertaken a basic disclosure check or a disclosure and barring service (DBS) check after call to the Bar will not be required to request a new check. For those barristers who do not have a check and have declared that they are currently undertaking work which engages the Regulations, or for those whose practice regularly engages the Regulations, they will be required to undertake a check before 26 June 2018. For those who have not declared at AtP but subsequently undertake work within the Regulations, it is proposed that they should request a check upon accepting instructions but only begin the work after the result of the check has been received. This position has been adopted following responses to the consultation as some respondents felt that requiring barristers to undertake a basic disclosure check before they know whether they will be undertaking work which engages the Money Laundering Regulations would be disproportionate¹¹.

Consistency

- 6.22 We believe that mirroring the practice area categories which are used by BMIF will reduce the regulatory burden on self-employed barristers as they would have to calculate their fee income in a different way to what they have previously declared to BMIF if an alternative system of categorisation were adopted.
- 6.23 For work in the Youth Court, responses to our consultation highlighted that we need to clearly define what we mean by 'proceedings involving young people' (the proposed wording in our consultation). There was uncertainty as to whether this

¹¹ See paragraph 3.68 of the summary of consultation responses

solely applied to Youth Court, or whether we were adopting a broader approach, encompassing any advocacy in proceedings with young people, in family proceedings for example. The definition has been clarified and means cases heard in the Youth Court, as set out in this paper.

- 6.24 The new requirements we are proposing for the Regulations are to ensure we act consistently with the new Regulations.
- 6.25 We do not consider the provision of a unique email address to be relevant to this principle.

Targeting

- 6.26 Our proposed rule requiring practice area information would apply to all barristers each year who are renewing their practising certificate at AtP. This is necessary to give effect to the policy objectives.
- 6.27 The rule requiring the registration of work in the Youth Court will apply to all barristers who do work in this area. Whilst the rule will require those barristers who have undertaken this work in the last 12 months, or are currently instructed to register, there is an option for barristers who anticipate undertaking this work in the next 12 months to register, although this would be voluntarily. Enabling this flexibility will mean that barristers wishing to enter this area of work will not face additional barriers, as their name will show on the BSB register. Importantly, for those barristers who register voluntarily, they will be required to declare their competency and be subject to the same supervisory approach as those who are required to register.
- 6.28 All barristers will be required to declare whether they are undertaking, are currently instructed, or in the last 12 months have undertaken work which engages the Regulations. Only those barristers who have in the last 12 months or are currently undertaking or instructed to undertake this work will be required to provide the additional declarations (regarding basic disclosure checks, whether they fall within the definition of a Trust and Company Service Provider and whether they have been convicted of a relevant offence).
- 6.29 The rule requiring barristers to register for My Bar with a unique email address will apply to all barristers when they first register for their My Bar account to ensure that we hold accurate information for how to contact each barrister.

Desired outcome

- 6.30 Having practice area information will mean we are more informed about risks and trends in the market and we can use this to better understand the type of work which the Bar is engaging in over time.
- 6.31 We will have accurate information about which barristers are engaging in work in the Youth Court, supporting a targeted supervisory approach and for third parties to report instances of non-registration or poor advocacy.

- 6.32 Implementing the new rules will enable us to comply with our obligations under the Regulations to carry out risk-based supervision, carry out suitability checks on relevant persons and provide a register of TCSPs to HMRC.
- 6.33 The provision of the unique email address will mean barristers will be able to control access to their My Bar account and the Records Office can more efficiently complete AtP as they will have direct contact details for the barrister.

7 Other regulators

- 7.1 In relation to work in the Youth Court, we sought the views of the SRA as they are undertaking similar work in this area and have produced their own materials for solicitors¹². We did not receive a response from the SRA to our consultation.
- 7.2 We are engaging with other legal sector regulators and regulators in other sectors that are subject to the Regulations, through the Money Laundering/Terrorist Financing Legal Sector Affinity Group and the Supervisors Forum. The legal sector supervisors have commenced regular meetings to work together on the implementation of the Regulations in the legal sector.

8 Date of implementation

- 8.1 We would anticipate, subject to the approval of our proposals, that the new rules would come into effect from 1 February 2018, in advance of the launch of our AtP process. This would enable us to capture data as soon as possible to help inform our work and to meet the deadline set by the Treasury to have the basic disclosure checks completed.
- 8.2 If we are unable to meet this deadline for all of the proposed reporting requirements, we would look to focus on the approval and implementation of our rules around the Regulations, as we have an external deadline. The subsequent rules could be introduced with a later implementation date.

9 Consultation processes undertaken

- 9.1 We have undertaken a 12 week consultation on our proposals and an analysis of the responses is attached at [Annex D](#). The consultation was published via a press release, featured in four Regulatory Updates¹³, was in a number of issues of Counsel Magazine, and was published on the BSB's Twitter, Facebook and LinkedIn accounts. We also engaged extensively with stakeholders regarding our Youth Proceedings Advocacy Review, including the Ministry of Justice, the Equality and Human Rights Commission and the Standing Committee for Youth Justice.

¹² <http://www.sra.org.uk/solicitors/cpd/youth-court-advocacy/resources.page>

¹³ An email sent by the BSB to the profession to provide them with regulatory updates

9.2 In summary, the main issues which the consultation responses identified were:

Practice area:

- Whether the BMIF categories should be applied to the whole profession, or just the self-employed Bar; and
- Whether the employed Bar should have to provide the percentage of their income according to practice area category.

Registration of Youth Court work:

- The scope of the rule; and
- Whether registration and competency should be linked; and
- Whether registration should be published on the BSB register.

The Regulations

- Whether the rule should focus of the last 12 months, rather than the next 12; and
- The most proportionate approach for a basic disclosure check to be undertaken.

9.3 For further information on the challenges presented from the consultation responses, please refer to the above application and the analysis of responses document.

10 Other explanatory material

Equality impact assessments

10.1 EIAs have been conducted on each proposal to ensure there are no unintended adverse impacts on equality and diversity. These did not highlight any adverse impacts on the protected characteristics. Each EIA is attached at [Annex B](#).

11 Monitoring and evaluation

Practice area information

11.1 Our first objective for collecting practice area information is to have reliable data on the areas of practice of the Bar. We will measure whether we have achieved this after three years by reviewing the number of pieces of research and policy work which have made use of the data, including projects related to our equality and access to justice work.

11.2 Our second objective for collecting practice area information is to have a better understanding of the risks in the market of barristers' services. We will measure this by reviewing our Risk Outlook which is due to be published in 2019 and to see how this makes use of the practice area information to inform a consideration of risks in the market.

Registration of Youth Court work

- 11.3 Our first objective is to have reliable data on the number of barristers conducting work in the Youth Court.
- 11.4 We will measure whether we have a full list of those undertaking this work by comparing the total number of barristers who have registered with our existing knowledge of approximate numbers. We will also measure this by encouraging third parties to check and report to the BSB if a barrister is not registered at the time of undertaking the work.
- 11.5 Our second objective is to use the data for regulatory purposes. We will measure this by reviewing the number of instances data on barristers who have registered is used for monitoring, reporting and project work, as well as the number of instances which result in targeted supervision (e.g. checking CPD).

The Regulations

- 11.6 Our first objective of requiring barristers to declare whether their work falls within the scope of the Regulations is so that we know which barristers are undertaking this work and to create risk profiles in order to determine the level of supervision for barristers undertaking this work. We will evaluate this by reviewing the annual report produced by OPBAS on our compliance according to their source book.
- 11.7 Our second objective is to ensure that barristers undertaking this work have been subject to appropriate checks. We will require all barristers who declare that they do this work to undertake a basic disclosure check, unless such a check (or a disclosure and barring service check) has been carried out since call to the Bar. We will measure whether this has been achieved by conducting spot checks on those barristers who have made the declaration to ensure the requirement to have a check has been complied with.
- 11.8 Our third objective is that the BSB is able to meet its obligations to provide HMRC with a register of TCSPs that we supervise. We will evaluate this by the number of instances which HMRC request further information.

Unique email address

- 11.9 Our objective is to ensure that the My Bar portal for barristers is secure and that there is no unauthorised access of barristers' data by third parties. We will measure this by conducting advanced finds on our CRM system to ensure there are no 'info@' or 'contact@', as this implies a generic address of their place of work. We will also keep a record of any suspected or reported security breach of My Bar accounts.