

SCHEDULES

SCHEDULE 10

Sections 74 and 76

DESIGNATION OF APPROVED REGULATORS AS LICENSING AUTHORITIES

PART 1

DESIGNATION OF APPROVED REGULATORS BY ORDER

Application to the Board

- 1 (1) This paragraph applies where a body wishes to become a licensing authority in relation to one or more activities which constitute one or more reserved legal activities.
- (2) The body may apply to the Board for the Board—
 - (a) to recommend that an order be made by the Lord Chancellor designating the applicant as a licensing authority in relation to the reserved legal activity or activities in question, and
 - (b) to approve what the applicant proposes as its licensing rules if such an order is made (“the proposed licensing rules”).
- (3) But the body may make an application under this paragraph in relation to a reserved legal activity only if—
 - (a) it is a relevant approved regulator in relation to the activity, or
 - (b) it has made an application under Part 2 of Schedule 4 (designation of approved regulators) for the Board to recommend that an order be made by the Lord Chancellor designating the body as an approved regulator in relation to the activity.
- (4) An application under this paragraph must be made in such form and manner as the Board may specify in rules and must be accompanied by—
 - (a) a statement of the reserved legal activity or activities to which it relates,
 - (b) details of the applicant’s proposed licensing rules,
 - (c) such explanatory material as the applicant considers is likely to be needed for the purposes of this Part of this Schedule, and
 - (d) the prescribed fee.
- (5) The prescribed fee is the fee specified in, or determined in accordance with, rules made by the Board with the consent of the Lord Chancellor.
- (6) An applicant may, at any time, withdraw the application by giving notice to that effect to the Board.

Dismissal of application

- 2 (1) The Board may refuse to consider, or to continue its consideration of, an application.
- (2) The Board must make rules about the procedures and criteria that it will apply when determining whether to refuse to consider, or to continue its consideration of, an application under sub-paragraph (1).
- (3) Where the Board decides to refuse to consider, or to continue its consideration of, an application it must give the applicant notice of that decision and of its reasons for it.
- (4) The Board must publish a notice given under sub-paragraph (3).

Board's duty to seek advice

- 3 (1) The Board must give each of the persons listed in sub-paragraph (2)—
 - (a) a copy of the application and accompanying material, and
 - (b) a notice specifying a period within which any advice given under paragraphs 4 to 6 must be given.
- (2) Those persons are—
 - (a) the OFT,
 - (b) the Consumer Panel,
 - (c) the Lord Chief Justice, and
 - (d) such other persons as the Board considers it reasonable to consult regarding the application.
- (3) In this Part of this Schedule, in relation to an application, “selected consultee” means a person within sub-paragraph (2)(d).

Advice of Office of Fair Trading

- 4 (1) The OFT must give the Board such advice as the OFT thinks fit regarding whether the application should be granted.
- (2) In deciding what advice to give, the OFT must, in particular, have regard to whether making an order under paragraph 15 in accordance with the recommendation applied for would (or would be likely to) prevent, restrict or distort competition within the market for reserved legal services to any significant extent.

Advice of the Consumer Panel

- 5 (1) The Consumer Panel must give the Board such advice as the Consumer Panel thinks fit regarding whether the application should be granted.
- (2) In deciding what advice to give, the Consumer Panel must, in particular, have regard to the likely impact on consumers of the making of an order under paragraph 15 in accordance with the recommendation applied for.

Advice of selected consultees

- 6 A selected consultee may give the Board such advice as the selected consultee thinks fit in respect of the application.

Advice of the Lord Chief Justice

- 7 (1) The Board must give the Lord Chief Justice—
- (a) a copy of any advice duly given under paragraphs 4 to 6, and
 - (b) a notice specifying a period within which any advice under this paragraph must be given.
- (2) The Lord Chief Justice must then give such advice to the Board as the Lord Chief Justice thinks fit regarding whether the application should be granted.
- (3) In deciding what advice to give, the Lord Chief Justice must, in particular, have regard to the likely impact on the courts in England and Wales of the making of an order under paragraph 15 in accordance with the recommendation applied for.

Information obtained by consultees

- 8 A person (“the consultee”) to whom a copy of the application is given under paragraph 3(1) may, for the purposes of giving advice under paragraphs 4 to 7, request the applicant or any other person to provide the consultee with such additional information as may be specified by the consultee.

Representations by applicant

- 9 (1) The Board must give the applicant a copy of any advice duly given under paragraphs 4 to 7.
- (2) The applicant may make to the Board—
- (a) written representations, and
 - (b) if the Board authorises it to do so, oral representations, about the advice.
- (3) The Board must make rules governing the making of oral and written representations.
- (4) Representations under this paragraph must be made within—
- (a) the period of 28 days beginning with the day on which the copy of the advice is given to the applicant, or
 - (b) such longer period as the Board may specify in a particular case.
- (5) Where oral representations are made, the Board must prepare a report of those representations.
- (6) Before preparing that report, the Board must—
- (a) give the applicant a reasonable opportunity to comment on a draft of the report, and
 - (b) have regard to any comments duly made.

Publication of advice and representations etc

- 10 (1) The Board must, as soon as practicable after the end of the period within which representations under paragraph 9 may be made, publish—
- (a) any advice duly given under paragraphs 4 to 7,
 - (b) any written representations duly made under paragraph 9 and the report (if any) prepared under that paragraph.

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- (2) Nothing in sub-paragraph (1) operates—
 - (a) to prevent a person who gives advice under paragraphs 4 to 7 from publishing that advice, or
 - (b) to prevent a person who makes representations under paragraph 9 from publishing those representations.
- (3) A person (“the publisher”) publishing any such material (whether under sub-paragraph (1) or otherwise) must, so far as practicable, exclude any matter which relates to the private affairs of a particular individual the publication of which, in the opinion of the publisher, would or might seriously and prejudicially affect the interests of that individual.

Rules governing decisions by the Board

- 11 (1) The Board must make rules specifying how it will determine applications.
- (2) Rules under sub-paragraph (1) must, in particular, provide that the Board may grant an application in relation to a particular reserved legal activity only if it is satisfied—
 - (a) that the applicant’s proposed licensing rules in relation to the activity comply with the requirements of section 83;
 - (b) that, if an order were to be made under paragraph 15 designating the body in relation to the activity, there would be a body with power to hear and determine appeals which, under this Part or the applicant’s proposed licensing rules, may be made against decisions of the applicant;
 - (c) that, if an order were to be made under paragraph 15 designating the body in relation to the activity, the applicant would have appropriate internal governance arrangements in place at the time the order takes effect;
 - (d) that, if an order were made under paragraph 15 designating the body in relation to the activity, the applicant would be competent, and have sufficient resources, to perform the role of licensing authority in relation to the activity at the time the order takes effect.
- (3) The rules made for the purposes of sub-paragraph (2)(c) must in particular require the Board to be satisfied—
 - (a) that the exercise of the applicant’s regulatory functions would not be prejudiced by any of its representative functions, and
 - (b) that decisions relating to the exercise of its regulatory functions would so far as reasonably practicable be taken independently from decisions relating to the exercise of its representative functions.

Determination of applications

- 12 (1) After considering—
 - (a) the application and accompanying material,
 - (b) any other information provided by the applicant,
 - (c) any advice duly given under paragraphs 4 to 7,
 - (d) any representations duly made under paragraph 9, and
 - (e) any other information which the Board considers relevant to the application,the Board must decide whether to grant the application.

- (2) Where the application relates to more than one reserved legal activity, the Board may grant the application in relation to all or any of them.
 - (3) The Board must give notice of its decision to the applicant (“the decision notice”).
 - (4) Where the Board decides to refuse the application (in whole or in part), the decision notice must specify the reasons for that decision.
 - (5) The Board must publish the decision notice.
- 13
- (1) Where an application is made under this Part, the Board must give the decision notice under paragraph 12 within the decision period.
 - (2) The “decision period” is the period of 12 months beginning with the day on which the application is made to the Board.
 - (3) The Board may, before the end of the decision period, issue a notice extending that period by a period specified in the notice.
 - (4) More than one notice may be issued under sub-paragraph (3), but the decision period must not exceed 16 months.
 - (5) The Board may issue a notice under sub-paragraph (3) only after it has—
 - (a) consulted the OFT, the Consumer Panel and the Lord Chief Justice, and
 - (b) obtained the Lord Chancellor’s consent to the extension.
 - (6) A notice under sub-paragraph (3) must state the Board’s reasons for extending the decision period.
 - (7) The Board must publish any notice issued under sub-paragraph (3).

Effect of grant of application

- 14
- (1) This paragraph applies where an application is granted in relation to a reserved legal activity or activities.
 - (2) The Board must recommend to the Lord Chancellor that an order be made designating the applicant as a licensing authority in relation to the reserved legal activity or activities in question.
 - (3) The Board must publish any recommendation made under sub-paragraph (2).
 - (4) The Board must make available to the Lord Chancellor—
 - (a) any advice duly given under paragraphs 4 to 7,
 - (b) any written representations duly made under paragraph 9 and the report (if any) prepared under that paragraph, and
 - (c) any other material considered by the Board for the purpose of determining the application.

Lord Chancellor’s decision to make an order

- 15
- (1) Where a recommendation is made to the Lord Chancellor under paragraph 14, the Lord Chancellor may—
 - (a) make an order in accordance with the recommendation, or
 - (b) refuse to make such an order.

- (2) Where the recommendation relates to more than one reserved legal activity, the Lord Chancellor may make an order under sub-paragraph (1)(a) in relation to all or any of them.
- (3) But if the application, in relation to a particular reserved legal activity, was made in reliance on paragraph 1(3)(b), the Lord Chancellor must not make an order in relation to that activity unless the Lord Chancellor has made an order under Part 2 of Schedule 4 designating the body as an approved regulator in relation to that activity.
- (4) The Lord Chancellor must—
 - (a) decide whether to make an order under this paragraph, and
 - (b) give notice of that decision (“the decision notice”) to the applicant, within the period of 90 days beginning with the day on which the recommendation was made.
- (5) If the Lord Chancellor decides not to make an order in accordance with the whole or part of the recommendation, the decision notice must state the reasons for the decision.
- (6) The Lord Chancellor must publish the decision notice.

Approval of licensing rules

- 16 (1) Where an order is made by the Lord Chancellor under paragraph 15, the applicant’s proposed licensing rules are at the same time treated as having been approved by the Board.
- (2) But where the order relates to one or more (but not all) of the reserved legal activities to which the application related, sub-paragraph (1) has effect as if the reference to the applicant’s proposed licensing rules were a reference to those rules excluding any provision made in respect of any activities excluded from the order.
- (3) Sub-paragraph (1) is without prejudice to the Board’s power to give directions under section 32 (powers to direct an approved regulator to take steps in certain circumstances, including steps to amend its regulatory arrangements).

PART 2

CANCELLATION OF DESIGNATION BY ORDER

Introductory

- 17 This Part of this Schedule applies where the Board considers that it may be appropriate for it to make a recommendation under section 76(5).

Notification of the licensing authority

- 18 (1) The Board must give the licensing authority a notice (“a warning notice”) accompanied by a draft of the proposed recommendation.
- (2) The warning notice must—
 - (a) state that the Board proposes to make a recommendation under subsection (5) of section 76 in the form of the accompanying draft, and

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- (b) state the reasons why the Board is satisfied of the matters mentioned in paragraphs (a) and (b) of that subsection.
- (3) The Board must publish a copy of the warning notice.
- (4) The licensing authority may make to the Board—
 - (a) written representations, and
 - (b) if the Board authorises it to do so, oral representations, about the proposed recommendation.
- (5) The Board must make rules governing the making of oral and written representations.
- (6) Representations under this paragraph must be made within—
 - (a) the period of 28 days beginning with the day on which the warning notice is given to the licensing authority, or
 - (b) such longer period as the Board may specify in a particular case.
- (7) The Board must consider any representations duly made by the licensing authority.
- (8) Where oral representations are duly made, the Board must prepare a report of those representations.
- (9) Before preparing that report, the Board must—
 - (a) give the licensing authority a reasonable opportunity to comment on a draft of the report, and
 - (b) have regard to any comments duly made.

Board's duty to seek advice

- 19 (1) After complying with paragraph 18, the Board must give each of the persons listed in sub-paragraph (2)—
 - (a) a copy of the warning notice and the accompanying draft,
 - (b) a copy of any written representations duly made by the licensing authority under paragraph 18 and a copy of the report (if any) prepared under that paragraph, and
 - (c) a notice specifying a period within which any advice under paragraphs 20 to 22 must be given.
- (2) Those persons are—
 - (a) the OFT,
 - (b) the Consumer Panel,
 - (c) the Lord Chief Justice, and
 - (d) such other persons as the Board considers it reasonable to consult in respect of the proposed recommendation.
- (3) In this Part of this Schedule, in relation to a proposed recommendation, “selected consultee” means a person within sub-paragraph (2)(d).

Advice of Office of Fair Trading

- 20 (1) The OFT must give the Board such advice as it thinks fit regarding whether the proposed recommendation should be made.

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- (2) In deciding what advice to give, the OFT must, in particular, have regard to whether making an order under section 76 in accordance with the proposed recommendation would (or would be likely to) prevent, restrict or distort competition within the market for reserved legal services to any significant extent.

Advice of the Consumer Panel

- 21 (1) The Consumer Panel must give the Board such advice as it thinks fit regarding whether the proposed recommendation should be made.
- (2) In deciding what advice to give, the Consumer Panel must, in particular, have regard to the likely impact on consumers of making an order under section 76 in accordance with the proposed recommendation.

Advice of selected consultees

- 22 A selected consultee may give the Board such advice as the selected consultee thinks fit in respect of the proposed recommendation.

Advice of the Lord Chief Justice

- 23 (1) The Board must give the Lord Chief Justice—
- (a) a copy of any advice duly given under paragraphs 20 to 22, and
 - (b) a notice specifying a period within which advice under this paragraph must be given.
- (2) The Lord Chief Justice must then give such advice as the Lord Chief Justice thinks fit in respect of the proposed recommendation.
- (3) In deciding what advice to give, the Lord Chief Justice must, in particular, have regard to the likely impact on the courts in England and Wales of making an order under section 76 in accordance with the proposed recommendation.

Information obtained by consultees

- 24 A person (“the consultee”) to whom a copy of the warning notice is given under paragraph 19(1) may, for the purposes of giving advice under paragraphs 20 to 23, request the licensing authority or any other person to provide the consultee with such additional information as may be specified by the consultee.

Representations by the approved regulator etc

- 25 (1) The Board must—
- (a) give the licensing authority a copy of any advice duly given under paragraphs 20 to 23, and
 - (b) publish that advice together with any written representations duly made by the licensing authority under paragraph 18 and the report (if any) prepared under that paragraph.
- (2) The licensing authority and any body within sub-paragraph (3) may make to the Board—
- (a) written representations, and

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- (b) if authorised to do so by the Board, oral representations, about the advice.
- (3) A body is within this sub-paragraph if it represents licensed bodies authorised by the licensing authority to carry on activities which are reserved legal activities.
- (4) The Board may allow any other person to make written or oral representations about the advice.
- (5) The Board may make rules governing the making to the Board of written or oral representations.
- (6) Representations under this paragraph must be made within—
 - (a) the period of 28 days beginning with the day on which the representations and advice are published under sub-paragraph (1)(b), or
 - (b) such longer period as the Board may specify in a particular case.
- (7) Where oral representations are made, the Board must prepare a report of those representations.
- (8) Before preparing that report, the Board must—
 - (a) give each person who made oral representations a reasonable opportunity to comment on a draft of the report of those representations, and
 - (b) have regard to any comments duly made.
- (9) The Board must, as soon as reasonably practicable after the end of the period within which representations under this paragraph may be made, publish any written representations duly made and the report (if any) prepared under sub-paragraph (7).

Publication of advice etc

- 26 (1) Nothing in paragraph 25 operates—
- (a) to prevent a person who gives advice under paragraphs 20 to 23 from publishing that advice, or
 - (b) to prevent a person who makes representations under paragraph 18 or 25 from publishing those representations.
- (2) A person (“the publisher”) publishing any such material (whether under paragraph 25 or otherwise) must, so far as practicable, exclude any matter which relates to the private affairs of a particular individual the publication of which, in the opinion of the publisher, would or might seriously and prejudicially affect the interests of that individual.

Decision by the Board

- 27 (1) After considering—
- (a) any advice duly given under paragraphs 20 to 23,
 - (b) any representations duly made under paragraph 18 or 25, and
 - (c) any other information which the Board considers relevant,
- the Board must decide whether to make the proposed recommendation.
- (2) The Board must give notice of its decision (“the decision notice”) to the licensing authority and to the Lord Chancellor.

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- (3) If the Board decides to make the proposed recommendation, the decision notice must—
- (a) contain the recommendation, and
 - (b) state why the Board is satisfied of the matters mentioned in section 76(5) (a) and (b).
- (4) The Board must publish the decision notice.