

SCHEDULES

SCHEDULE 6

Sections 24 and 26

ALTERATION OF RESERVED LEGAL ACTIVITIES

Introductory

- 1 In this Schedule, in relation to an activity—
- “section 24 investigation” means an investigation held with a view to determining whether or not the Board should make a recommendation in respect of the activity for the purposes of section 24 (recommendations and orders to extend the reserved legal activities);
 - “section 26 investigation” means an investigation held with a view to determining whether or not the Board should make a recommendation in respect of the activity for the purposes of section 26 (recommendations that an activity should cease to be a reserved legal activity).

Requests for Board to hold a full investigation

- 2 (1) A person may—
- (a) request the Board to hold a section 24 investigation in respect of an activity, or
 - (b) request the Board to hold a section 26 investigation in respect of an activity.
- (2) A request under sub-paragraph (1) must be in writing and specify the activity to which it relates.
- (3) In the case of a request for a section 24 investigation, the activity in respect of which the request is made must be a legal activity.

Board’s duty to hold preliminary inquiries in certain cases

- 3 (1) This paragraph applies where the Board receives a request under paragraph 2, in respect of an activity, from—
- (a) the Lord Chancellor,
 - (b) the OFT,
 - (c) the Consumer Panel, or
 - (d) the Lord Chief Justice.
- (2) The Board must—
- (a) carry out such inquiries as it considers appropriate to enable it to determine whether it is appropriate to hold a section 24 investigation or, as the case may be, a section 26 investigation in respect of the activity, and
 - (b) make that determination within the preliminary inquiry period.

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- (3) “The preliminary inquiry period” means the period of 3 months beginning with the day on which the request under paragraph 2 was received by the Board.
- (4) The Board may, before the end of the preliminary inquiry period in relation to a request, issue a notice extending that period by a period specified in the notice.
- (5) More than one notice may be issued under sub-paragraph (4), but the total preliminary inquiry period must not exceed 4 months.
- (6) A notice under sub-paragraph (4) must state the Board’s reasons for extending the preliminary inquiry period.
- (7) The Board must publish a notice issued under sub-paragraph (4).

Board’s power to hold preliminary inquiries in other cases

- 4 (1) The Board may—
 - (a) where it receives a request under paragraph 2 to which paragraph 3 does not apply, or
 - (b) in any other case where it considers it appropriate to do so,
 carry out such inquiries as it considers appropriate to enable it to determine whether it is appropriate to hold a section 24 investigation or a section 26 investigation in respect of an activity.
- (2) In the case of a section 24 investigation, that activity must be a legal activity.

Advice

- 5 (1) Before determining whether it is appropriate to hold a section 24 investigation or a section 26 investigation in respect of an activity, the Board may seek the advice of one or both of the following bodies—
 - (a) the OFT;
 - (b) the Consumer Panel.
- (2) The OFT or the Consumer Panel must, if its advice is sought, give the Board such advice as it thinks fit, within such reasonable period as the Board may specify.
- (3) In deciding what advice to give—
 - (a) the OFT must, in particular, consider whether making an order under section 24 or (as the case may be) provision in accordance with a recommendation under section 26, in respect of the activity would (or would be likely to) prevent, restrict or distort competition within the market for reserved legal services to any significant extent, and
 - (b) the Consumer Panel must have regard to the likely impact which making that order or (as the case may be) provision would have on consumers.
- (4) The OFT or the Consumer Panel may, for the purposes of giving advice under this paragraph, request any person to provide it with such information as may be specified by it.
- 6 (1) Before determining whether it is appropriate to hold a section 24 investigation or a section 26 investigation in respect of an activity the Board may also seek the advice of the Lord Chief Justice.

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- (2) If the Board has sought advice under paragraph 5, the Board may not seek advice from the Lord Chief Justice until—
 - (a) the period for giving advice under paragraph 5 has ended, and
 - (b) it has given the Lord Chief Justice a copy of any advice duly given under that paragraph.
 - (3) If advice is sought under sub-paragraph (1), the Lord Chief Justice—
 - (a) must give the Board such advice as the Lord Chief Justice thinks fit, within such reasonable period as may be specified by the Board, and
 - (b) may, for the purposes of giving that advice, request any person to provide the Lord Chief Justice with such information as may be specified by the Lord Chief Justice.
 - (4) 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 section 24 or (as the case may be) provision in accordance with a recommendation under section 26, in respect of the activity in question.
- 7
- (1) The Board must consider, and publish, any advice given under paragraph 5 or 6.
 - (2) Nothing in this paragraph operates to prevent a person who gives such advice from publishing it.

Restrictions on refusing a paragraph 2 request

- 8
- (1) This paragraph applies where—
 - (a) a request has been made under paragraph 2, and
 - (b) paragraph 3 applies to that request.
 - (2) The Board may refuse the request only if—
 - (a) the consultation requirements are satisfied, and
 - (b) either the consent requirement is satisfied or the request was made by the Lord Chancellor.
 - (3) The consultation requirements are—
 - (a) that the Board has consulted the OFT, the Consumer Panel and the Lord Chief Justice under paragraphs 5 and 6, and
 - (b) that—
 - (i) the Board has obtained advice from the OFT and the Consumer Panel or the period within which that advice is required to be given has expired, and
 - (ii) the Board has obtained advice from the Lord Chief Justice or the period within which that advice is required to be given has expired.
 - (4) The consent requirement is that—
 - (a) the Board has given the Lord Chancellor a copy of any advice given under paragraph 5 or 6, and
 - (b) the Lord Chancellor has consented to the Board's refusal of the request.

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Decision to hold investigation

- 9 (1) This paragraph applies where the Board has decided, following inquiries under paragraph 3 or 4, to hold a section 24 investigation or a section 26 investigation in respect of an activity.
- (2) The Board must, as soon as reasonably practicable, give notice of its decision to—
- (a) the Lord Chancellor,
 - (b) the OFT,
 - (c) the Consumer Panel, and
 - (d) the Lord Chief Justice,
- and publish the notice.
- (3) The notice must—
- (a) state the Board’s reasons for its decision to hold the investigation, and
 - (b) contain a description (in general terms) of the procedure set out in paragraphs 10 to 17 and in rules under this Schedule, including any relevant time limits.

Duty to investigate and produce a provisional report within the investigation period

- 10 (1) This paragraph applies where the Board has given notice under paragraph 9(2) of—
- (a) a decision to hold a section 24 investigation, or
 - (b) a decision to hold a section 26 investigation,
- in respect of an activity.
- (2) The Board must within the investigation period—
- (a) carry out such investigations as it considers appropriate for the purposes of enabling it to produce a provisional report in respect of the activity, and
 - (b) produce and publish such a report.
- (3) A provisional report is a report stating—
- (a) in a case within sub-paragraph (1)(a), whether or not the Board is minded to make a recommendation for the purposes of section 24 (recommendation that activity should become a reserved legal activity);
 - (b) in a case within sub-paragraph (1)(b), whether or not the Board is minded to make a recommendation for the purposes of section 26 (recommendation that activity should cease to be a reserved legal activity).
- (4) A provisional report must also state the Board’s reasons for it being, or not being, minded to make the recommendation in question.

“The investigation period”

- 11 (1) “The investigation period” means the period of 12 months beginning with the day on which the notice was given under paragraph 9(2).
- (2) The Board may, before the end of the investigation period, issue a notice extending that period by a period specified in the notice.
- (3) More than one notice may be issued under sub-paragraph (2) but the total investigation period must not exceed 16 months.
- (4) The Board may issue a notice under sub-paragraph (2) only after it has consulted—

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- (a) the OFT,
- (b) the Consumer Panel, and
- (c) the Lord Chief Justice.

(5) A notice under sub-paragraph (2) must state the Board's reasons for extending the investigation period.

(6) The Board must publish any notice issued under sub-paragraph (2).

Supplementary provisions about the investigation

- 12 (1) This paragraph applies for the purposes of investigations under paragraph 10(2)(a).
- (2) The Board may make rules governing the making of oral and written representations, and the giving of oral and written evidence, to the Board.
- (3) Rules under sub-paragraph (2) may (among other things) include—
- (a) provision about the time and place at which any oral evidence is to be given or oral representations are to be heard;
 - (b) provision about the period within which any written evidence is to be given or written representations are to be made.
- (4) In relation to each investigation, the Board must determine if, and to what extent—
- (a) oral evidence or representations should be heard, and
 - (b) written evidence or representations should be received.
- (5) The Board must, so far as is reasonably practicable, consider any written or oral representations duly made under this paragraph.

Consideration of the provisional report

- 13 (1) The Board may make rules governing the making to the Board of oral and written representations in respect of provisional reports.
- (2) Rules under sub-paragraph (1) may (among other things) include—
- (a) provision about the time and place at which any oral representations are to be heard;
 - (b) provision about the period within which any written representations are to be made.
- (3) The Board must exercise the power conferred by sub-paragraph (1) to make provision—
- (a) enabling written representations and, so far as is reasonably practicable, oral representations to be made by affected practitioners, and
 - (b) enabling written or oral representations to be made by bodies which represent affected practitioners.
- (4) An “affected practitioner” is a person carrying on the activity in respect of which the investigation is being held.
- 14 (1) For the purpose of making a decision under paragraph 16(1)(a) or (b), the Board must, after publication of a provisional report, determine if and to what extent further evidence should be heard or received.
- (2) The Board may make rules governing the giving of such evidence.

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- (3) Rules under sub-paragraph (2) may (among other things) include—
 - (a) provision about the time and place at which any oral evidence is to be given;
 - (b) provision about the period within which any written evidence is to be given.
- 15 The Board must, so far as is reasonably practicable, consider—
 - (a) any written or oral representations made in accordance with rules to which paragraph 13(3) applies, and
 - (b) any other representations made in accordance with rules under paragraph 13(1), and any written or oral evidence given in accordance with rules under paragraph 14(2), which the Board considers relevant.

Duty to prepare final report within the final reporting period

- 16 (1) After complying with paragraph 15, the Board must decide—
 - (a) in the case of a section 24 investigation, whether or not to make a recommendation for the purposes of that section, and
 - (b) in the case of a section 26 investigation, whether or not to make a recommendation for the purposes of that section.
- (2) The Board must prepare a report (“the final report”) which sets out—
 - (a) its decision and the reasons for it,
 - (b) where it decides to make a recommendation for the purposes of section 24 or 26, that recommendation, and
 - (c) where it decides to make a recommendation for the purposes of section 24, a statement of the provision which, in the Board’s opinion, will need to be made by virtue of section 204(3) or in an order under section 208 (power to make consequential provision, transitional provision etc) if an order is made under section 24 in accordance with that recommendation.
- (3) The Board must—
 - (a) give a copy of the final report to the Lord Chancellor, and
 - (b) publish that report.
- (4) The Board must comply with the obligations imposed by this paragraph within the final reporting period.

“The final reporting period”

- 17 (1) “The final reporting period” means the period of 3 months beginning with the date on which the provisional report was published under paragraph 10(2).
- (2) The Board may, before the end of the final reporting period, issue a notice extending that period by a period specified in the notice.
- (3) More than one notice may be issued under sub-paragraph (2), but the total final reporting period must not exceed 5 months.
- (4) The Board may issue a notice under sub-paragraph (2) only after it has consulted—
 - (a) the OFT,
 - (b) the Consumer Panel, and
 - (c) the Lord Chief Justice.

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- (5) A notice under sub-paragraph (2) must state the Board's reasons for extending the final reporting period.
- (6) The Board must publish a notice issued under sub-paragraph (2).

Costs

- 18 The Board may pay such costs of a person as the Board considers reasonable for the purpose of facilitating the giving of oral evidence or the making of oral representations, by or on behalf of that person, in accordance with rules made under this Schedule.