

SCHEDULES

SCHEDULE 9

Section 45

CANCELLATION OF DESIGNATION AS APPROVED REGULATOR

Introductory

- 1 This Schedule applies where the Board considers that it may be appropriate for it to make a recommendation under section 45(5).

Notification of the approved regulator

- 2 (1) The Board must give the approved regulator 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 45 in the form of the accompanying draft, and
 - (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 approved regulator 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 approved regulator, 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 approved regulator.
- (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 approved regulator a reasonable opportunity to comment on a draft of the report, and
 - (b) have regard to any comments duly made.

Status: This is the original version (as it was originally enacted).

Board's duty to seek advice

- 3 (1) After complying with paragraph 2, 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 approved regulator under paragraph 2 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 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 in respect of the proposed recommendation.
- (3) In this Schedule, in relation to a proposed recommendation, “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 it thinks fit regarding whether the proposed recommendation should be made.
- (2) In deciding what advice to give, the OFT must, in particular, have regard to whether making an order under section 45 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

- 5 (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 45 in accordance with the proposed recommendation.

Advice of selected consultees

- 6 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

- 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 advice under this paragraph must be given.

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- (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 45 in accordance with the proposed recommendation.

Information obtained by consultees

- 8 A person (“the consultee”) to whom a copy of the warning notice is given under paragraph 3(1) may, for the purposes of giving advice under paragraphs 4 to 7, request the approved regulator 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

- 9 (1) The Board must—
- (a) give the approved regulator a copy of any advice duly given under paragraphs 4 to 7, and
 - (b) publish that advice together with any written representations duly made by the approved regulator under paragraph 2 and the report (if any) prepared under that paragraph.
- (2) The approved regulator and any body within sub-paragraph (3) may make to the Board—
- (a) written representations, and
 - (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 persons authorised by the approved regulator 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).

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Publication of advice etc

- 10 (1) Nothing in paragraph 9 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 2 or 9 from publishing those representations.
- (2) A person (“the publisher”) publishing any such material (whether under paragraph 9 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

- 11 (1) After considering—
- (a) any advice duly given under paragraphs 4 to 7,
 - (b) any representations duly made under paragraph 2 or 9, 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 approved regulator and to the Lord Chancellor.
- (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 45(5) (a) and (b).
- (4) The Board must publish the decision notice.