

SCHEDULES

SCHEDULE 8

Sections 41 and 44

INTERVENTION DIRECTIONS: PROCEDURE

PART 1

GIVING INTERVENTION DIRECTIONS

Introductory

- 1 (1) This Part of this Schedule applies where the Board proposes giving an intervention direction to an approved regulator in respect of a regulatory function.
- (2) In this Schedule “intervention direction” has the same meaning as in section 41.

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 intervention direction.
- (2) The warning notice must—
 - (a) state that the Board proposes to give the approved regulator an intervention direction in the form of the accompanying draft and the time when it is proposed that direction should take effect, and
 - (b) state the reasons why the Board is satisfied of the matters mentioned in section 41(1)(a) and (b).
- (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 intervention direction.
- (5) The Board must make rules governing the making of written and oral representations.
- (6) Any representations under sub-paragraph (4) must be made before the end of—
 - (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) Where oral representations are duly made under this paragraph, the Board must prepare a report of those representations.
- (8) Before preparing that report, the Board must—

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- (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.

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 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 7 must be given.
- (2) Those persons are—
- (a) the Lord Chancellor,
 - (b) the OFT,
 - (c) the Consumer Panel,
 - (d) the Lord Chief Justice, and
 - (e) such other persons as the Board considers it reasonable to consult in respect of the proposed intervention direction.
- (3) In this Part of this Schedule, in relation to a proposed intervention direction, “selected consultee” means a person within sub-paragraph (2)(e).

Advice of the Lord Chancellor

- 4 The Lord Chancellor must give the Board such advice as the Lord Chancellor thinks fit in respect of the proposed intervention direction.

Advice of Office of Fair Trading

- 5 (1) The OFT must give the Board such advice as it thinks fit regarding whether the proposed intervention direction should be given.
- (2) In deciding what advice to give, the OFT must, in particular, have regard to whether giving the proposed intervention direction 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

- 6 (1) The Consumer Panel must give the Board such advice as it thinks fit regarding whether the proposed intervention direction should be given.
- (2) In deciding what advice to give, the Consumer Panel must, in particular, have regard to the likely impact of the proposed direction on consumers.

Advice of selected consultees

- 7 A selected consultee may give the Board such advice as the selected consultee thinks fit in respect of the proposed intervention direction.

Advice of the Lord Chief Justice

- 8 (1) The Board must give the Lord Chief Justice—
- (a) a copy of any advice duly given under paragraphs 4 to 7, 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 as the Lord Chief Justice thinks fit regarding whether the proposed intervention direction should be given.
- (3) In deciding what advice to give, the Lord Chief Justice must, in particular, have regard to the likely impact of the proposed intervention direction on the courts in England and Wales.

Consultees' powers to request information

- 9 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 8, 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

- 10 (1) The Board must—
- (a) give the approved regulator a copy of any advice duly given under paragraphs 4 to 8, 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 the Board authorises it to do so, 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 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 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

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- (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 may be made under this paragraph, publish any written representations duly made and the report (if any) prepared under sub-paragraph (7).

Further provision about publishing of advice and representations

- 11 (1) Nothing in paragraph 10 operates—
- (a) to prevent a person who gives advice under paragraphs 4 to 8 from publishing that advice, or
 - (b) to prevent a person who makes representations under paragraph 2 or 10 from publishing those representations.
- (2) A person (“the publisher”) publishing any such material (whether under paragraph 10 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

- 12 (1) After considering—
- (a) any advice duly given under paragraphs 4 to 8,
 - (b) any representations duly made under paragraph 2 or 10, and
 - (c) any other information which the Board considers relevant,
- the Board must decide whether to give an intervention direction.
- (2) Where it decides to give an intervention direction, it may decide—
- (a) to give an intervention direction in the form of the proposed intervention direction, or
 - (b) to amend the form of the proposed intervention direction and give an intervention direction in that amended form.
- (3) The Board must give notice of its decision (“the decision notice”) to the approved regulator.
- (4) Where the Board decides to give an intervention direction, the decision notice must—
- (a) contain the intervention direction,
 - (b) state the time at which the intervention direction is to take effect,
 - (c) specify the reasons why the Board is satisfied of the matters mentioned in section 41(1)(a) and (b), and
 - (d) if the decision is under sub-paragraph (2)(b), set out the nature of any amendments made and the reasons for them.
- (5) The time specified under sub-paragraph (4)(b) must not be before—
- (a) the time specified in the warning notice in accordance with paragraph 2(2)(a), or
 - (b) the time the decision notice is given to the approved regulator.
- (6) The Board must publish the decision notice.

PART 2

REVOKING INTERVENTION DIRECTIONS

Introductory

- 13 (1) Where an intervention direction has effect in respect of a regulatory function of an approved regulator—
- (a) the approved regulator may apply to the Board for the Board to revoke the direction, or
 - (b) the Board may give the approved regulator a notice stating the Board's intention to revoke the direction.
- (2) An application under sub-paragraph (1)(a) must—
- (a) be made in the form and manner specified by the Board, and
 - (b) be accompanied by such material as the applicant considers is likely to be needed for the purposes of this Part of this Schedule.

Board's duty to seek advice

- 14 (1) Where the Board has received an application under paragraph 13(1)(a), it must give each of the persons listed in sub-paragraph (3)—
- (a) a copy of the application,
 - (b) a copy of any material which accompanied it, and
 - (c) a notice specifying a period within which any advice under paragraphs 15 to 18 must be given.
- (2) Where the Board has given a notice under paragraph 13(1)(b), it must give each of the persons listed in sub-paragraph (3)—
- (a) a copy of the notice, and
 - (b) a notice specifying a period within which any advice under paragraphs 15 to 18 must be given.
- (3) The persons are—
- (a) the Lord Chancellor,
 - (b) the OFT,
 - (c) the Consumer Panel,
 - (d) the Lord Chief Justice, and
 - (e) such other persons as the Board considers it reasonable to consult in respect of the proposed revocation.
- (4) In this Part of this Schedule, in relation to an application or notice, “selected consultee” means a person within sub-paragraph (3)(e).

Advice of the Lord Chancellor

- 15 The Lord Chancellor must give the Board such advice as the Lord Chancellor thinks fit in respect of the proposed revocation.

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Advice of Office of Fair Trading

- 16 (1) The OFT must give the Board such advice as it thinks fit regarding the proposed revocation.
- (2) In deciding what advice to give, the OFT must, in particular, have regard to whether revoking the intervention direction 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

- 17 (1) The Consumer Panel must give the Board such advice as it thinks fit regarding the proposed revocation.
- (2) In deciding what advice to give, the Consumer Panel must, in particular, have regard to the likely impact which revoking the intervention direction would have on consumers.

Advice of the selected consultees

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

Advice of the Lord Chief Justice

- 19 (1) The Board must give the Lord Chief Justice—
- (a) a copy of any advice duly given under paragraphs 15 to 18, 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 the Board such advice as the Lord Chief Justice thinks fit in respect of the proposed revocation.
- (3) In deciding what advice to give, the Lord Chief Justice must, in particular, have regard to the likely impact which revoking the intervention direction would have on the courts in England and Wales.

Information obtained by consultees

- 20 A person to whom a copy of the application or notice is given under paragraph 14(1) or (2) may, for the purposes of giving advice under paragraphs 15 to 19, request the approved regulator or any other person to provide that person with such additional information as may be specified by that person.

Representations by approved regulator etc

- 21 (1) The Board must—
- (a) give the approved regulator a copy of any advice duly given under paragraphs 15 to 19, and
 - (b) publish that advice.
- (2) The approved regulator and any body within sub-paragraph (3) may make to the Board—

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- (a) written representations, and
 - (b) if the Board authorises it to do so, 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 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 advice is published under sub-paragraph (1), 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 practicable after the end of the period within which representations may be made under this paragraph, publish any written representations duly made and the report (if any) prepared under sub-paragraph (7).

Further provision about publishing advice and representations

- 22 (1) Nothing in paragraph 21 operates—
- (a) to prevent a person who gives advice under paragraphs 15 to 19 from publishing that advice, or
 - (b) to prevent a person who makes representations under paragraph 21 from publishing those representations.
- (2) A person (“the publisher”) publishing any such material (whether under paragraph 21 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

- 23 (1) After considering—
- (a) in a case within paragraph 13(1)(a), the application and any accompanying material,
 - (b) any advice duly given under paragraphs 15 to 19,
 - (c) any representations duly made under paragraph 21, and
 - (d) any other information which the Board considers relevant to the application or notice,

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the Board must decide whether to revoke the intervention direction in accordance with the application or notice.

- (2) The Board must give notice of its decision (“the decision notice”) to the approved regulator.
- (3) Where the Board decides to revoke the intervention direction, the decision notice must state the time the revocation is to take effect.
- (4) Where the Board decides not to revoke the intervention direction, the decision notice must specify the reasons for that decision.
- (5) The Board must publish the decision notice.