

SCHEDULES

SCHEDULE 5

Section 41.

AUTHORISED BODIES: DESIGNATION AND REGULATIONS AND RULES

1 For sections 29 and 30 of the Courts and Legal Services Act 1990 substitute—

“29 Authorised bodies

The provisions of Schedule 4 shall have effect with respect to the authorisation of bodies for the purposes of sections 27 and 28 and the approval and alteration of qualification regulations and rules of conduct.”

2 For Schedule 4 to that Act substitute—

“SCHEDULE 4

Section 29.

AUTHORISED BODIES

PART I

DESIGNATION OF BODIES AND APPROVAL OF REGULATIONS AND RULES

Application to Lord Chancellor

- 1 (1) If a professional or other body wishes to grant rights of audience or rights to conduct litigation to any of its members, it shall apply to the Lord Chancellor in writing for him—
- (a) to recommend to Her Majesty that an Order in Council be made designating the body as an authorised body for the purposes of section 27 (if it proposes to grant rights of audience) or section 28 (if it proposes to grant rights to conduct litigation); and
 - (b) to approve what the body proposes as qualification regulations and rules of conduct in relation to the proposed rights.
- (2) An application under this paragraph shall be accompanied by—
- (a) a statement of the proposed rights;
 - (b) the proposed qualification regulations and rules of conduct; and
 - (c) such explanatory material (including material about the applicant’s constitution and activities) as the applicant considers is likely to be needed for the purposes of this Part of this Schedule.
- (3) The applicant shall provide the Lord Chancellor with such additional information as he may reasonably require.

Status: This is the original version (as it was originally enacted).

- (4) The Lord Chancellor shall send a copy of—
- (a) the application and accompanying material; and
 - (b) any information provided under sub-paragraph (3),
- to the Consultative Panel, the Director and each of the designated judges.

Advice of Consultative Panel

- 2
- (1) The Consultative Panel shall consider whether the application should be granted.
 - (2) The applicant shall provide the Consultative Panel with such additional information as it may reasonably require.
 - (3) When the Consultative Panel has completed its consideration it shall give such advice to the Lord Chancellor as it thinks fit.
 - (4) The Consultative Panel shall publish any advice given by it under this paragraph.

Advice of Director General of Fair Trading

- 3
- (1) The Director shall consider whether granting the application would have, or be likely to have, any significant effect on competition.
 - (2) The applicant shall provide the Director with such additional information as he may reasonably require.
 - (3) When the Director has completed his consideration he shall give such advice to the Lord Chancellor as he thinks fit.
 - (4) The Director shall publish any advice given by him under this paragraph.
 - (5) The Director shall, so far as practicable, exclude from anything published under sub-paragraph (4) any matter which relates to the affairs of a particular person (other than the applicant) the publication of which would, or might in the Director's opinion, seriously and prejudicially affect the interests of that person.
 - (6) Section 46 shall apply in relation to the investigation of any matter with a view to its consideration under this paragraph as it applies in relation to the investigation of any matter under section 45.

Representations by applicant

- 4
- (1) When the Lord Chancellor has received the advice of the Consultative Panel and the Director, he shall send a copy of the advice to the applicant.
 - (2) The applicant shall be allowed a period of 28 days beginning with the day on which the copy is sent to him, or such other period as the applicant and the Lord Chancellor may agree, to make representations about the advice to the Lord Chancellor.

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

Advice of designated judges

- 5 (1) The Lord Chancellor shall send to each of the designated judges a copy of—
- (a) the advice of the Consultative Panel and the Director; and
 - (b) any representations made under paragraph 4(2).
- (2) Each of the designated judges shall then consider whether the application should be granted.
- (3) The applicant shall provide each of the designated judges with such additional information as he may reasonably require.
- (4) When each of the designated judges has completed his consideration he shall give such advice to the Lord Chancellor as he thinks fit.

Decision by Lord Chancellor

- 6 (1) After considering—
- (a) the advice given by the Consultative Panel and any representations made about it;
 - (b) the advice given by the Director and any representations made about it; and
 - (c) the advice given by each of the designated judges,
- the Lord Chancellor shall decide whether to grant the application.
- (2) When the Lord Chancellor has made his decision he shall notify the applicant of it.
- (3) If the Lord Chancellor has decided to refuse the application he shall also notify the applicant of the reasons for his decision.

Effect of grant of application

- 7 Where the application is granted—
- (a) the Lord Chancellor may recommend to Her Majesty that an Order in Council be made designating the body as an authorised body for the purposes of section 27 (if it proposes to grant rights of audience) or section 28 (if it proposes to grant rights to conduct litigation); and
 - (b) the proposed regulations and rules are approved as qualification regulations and rules of conduct in relation to the proposed rights.

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

PART II

APPROVAL IN CASES OF ALTERED REGULATIONS, RULES OR RIGHTS

Requirement of approval

- 8 (1) If an authorised body makes an alteration of its qualification regulations or rules of conduct, the alteration shall not have effect unless approved by the Lord Chancellor.
- (2) If an authorised body makes an alteration of—
- (a) any rights of audience granted by it (including the grant of a new right of audience); or
 - (b) any rights to conduct litigation granted by it (including the grant of a new right to conduct litigation),
- the qualification regulations and rules of conduct of the body shall not have effect in relation to the rights as altered unless approved by the Lord Chancellor.
- (3) If a question arises whether approval is required by virtue of this paragraph it shall be for the Lord Chancellor to decide.

Application to Lord Chancellor

- 9 (1) An application by a body for the Lord Chancellor to approve—
- (a) an alteration of qualification regulations or rules of conduct; or
 - (b) qualification regulations or rules of conduct in relation to altered rights,
- shall be made in writing.
- (2) The application shall be accompanied by—
- (a) the qualification regulations and rules of conduct;
 - (b) a statement of the alteration of the regulations, rules or rights; and
 - (c) such explanatory material as the applicant considers is likely to be needed for the purposes of this Part of this Schedule.
- (3) The applicant shall provide the Lord Chancellor with such additional information as he may reasonably require.
- (4) The Lord Chancellor shall—
- (a) send a copy of the application and accompanying material and any information provided under sub-paragraph (3) to each of the designated judges; and
 - (b) consider whether it would be appropriate to seek the advice of either or both of the Consultative Panel and the Director.

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Early advice of designated judges

- 10 (1) If the Lord Chancellor considers that it would not be appropriate to seek the advice of the Consultative Panel or the Director, he—
- (a) shall inform each of the designated judges that that is his view; and
 - (b) may inform each of them of his provisional view as to whether or not the application should be granted.
- (2) If so informed, each of the designated judges shall consider whether the application should be granted.
- (3) The applicant shall provide each of the designated judges with such additional information as he may reasonably require.
- (4) When each of the designated judges has completed his consideration he shall give such advice to the Lord Chancellor as he thinks fit.
- (5) After considering the advice given by each of the designated judges, the Lord Chancellor shall consider again whether or not it would be appropriate to seek the advice of either or both of—
- (a) the Consultative Panel; and
 - (b) the Director,
- before deciding whether to grant the application.

Advice of Consultative Panel

- 11 (1) If the Lord Chancellor decides (after considering the matter under paragraph 9(4)(b) or 10(5)) to seek the advice of the Consultative Panel, he shall send to the Consultative Panel a copy of—
- (a) the application and accompanying material; and
 - (b) any information provided under paragraph 9(3).
- (2) The Consultative Panel shall consider whether the application should be granted.
- (3) The applicant shall provide the Consultative Panel with such additional information as it may reasonably require.
- (4) When the Consultative Panel has completed its consideration it shall give such advice to the Lord Chancellor as it thinks fit.
- (5) The Consultative Panel shall publish any advice given by it under this paragraph.

Advice of Director General of Fair Trading

- 12 (1) If the Lord Chancellor decides (after considering the matter under paragraph 9(4)(b) or 10(5)) to seek the advice of the Director, he shall send to the Director a copy of—
- (a) the application and accompanying material; and
 - (b) any information provided under paragraph 9(3).

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- (2) The Director shall consider whether granting the application would have, or be likely to have, any significant effect on competition.
- (3) The applicant shall provide the Director with such additional information as he may reasonably require.
- (4) When the Director has completed his consideration he shall give such advice to the Lord Chancellor as he thinks fit.
- (5) The Director shall publish any advice given by him under this paragraph.
- (6) The Director shall, so far as practicable, exclude from anything published under sub-paragraph (5) any matter which relates to the affairs of a particular person (other than the applicant) the publication of which would, or might in the Director's opinion, seriously and prejudicially affect the interests of that person.
- (7) Section 46 shall apply in relation to the investigation of any matter with a view to its consideration under this paragraph as it applies in relation to the investigation of any matter under section 45.

Representations by applicant

- 13 (1) If the Lord Chancellor has sought the advice of the Consultative Panel or the Director he shall, on receiving it, send a copy to the applicant.
- (2) The applicant shall be allowed a period of 28 days beginning with the day on which the copy is sent to him, or such other period as the applicant and the Lord Chancellor may agree, to make representations about the advice to the Lord Chancellor.

Advice or further advice of designated judges

- 14 (1) If the Lord Chancellor has sought the advice of the Consultative Panel or the Director he shall, on receiving it, send to each of the designated judges a copy of—
 - (a) the advice; and
 - (b) any representations made under paragraph 13(2).
- (2) Each of the designated judges shall then consider (or consider again) whether the application should be granted.
- (3) The applicant shall provide each of the designated judges with such additional information as he may reasonably require.
- (4) When each of the designated judges has completed his consideration he shall give such advice to the Lord Chancellor as he thinks fit.

Decision by Lord Chancellor

- 15 (1) After considering—
 - (a) any advice given by the Consultative Panel and any representations made about it;

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- (b) any advice given by the Director and any representations made about it; and
 - (c) the advice given by each of the designated judges (under paragraph 10 or 14 or both of those paragraphs),
- the Lord Chancellor shall decide whether to grant the application.
- (2) The Lord Chancellor may not refuse the application unless he has received advice from the Consultative Panel.
 - (3) When the Lord Chancellor has made his decision he shall notify the applicant of it.
 - (4) If the Lord Chancellor has decided to refuse the application he shall also notify the applicant of the reasons for his decision.

Effect of grant of application

- 16 Where the application is granted—
- (a) in a case within sub-paragraph (1) of paragraph 8, the alteration of the qualification regulations or rules of conduct is approved; and
 - (b) in a case within sub-paragraph (2) of that paragraph, the qualification regulations or rules of conduct are approved in relation to the rights as altered.

PART III

ALTERATION OF REGULATIONS AND RULES BY ORDER

Notice to authorised body

- 17 (1) If the Lord Chancellor considers—
- (a) that any of the qualification regulations of an authorised body may unduly restrict a right of audience or right to conduct litigation or the exercise of such a right, or
 - (b) that any of the rules of conduct of an authorised body may unduly restrict the exercise of such a right,
- he may give written notice to the body.
- (2) Before giving notice to an authorised body under sub-paragraph (1) the Lord Chancellor shall inform each of the designated judges that he intends to do so.

Representations by authorised body

- 18 (1) The notice shall invite the authorised body to make representations in writing to the Lord Chancellor.
- (2) Any such representations must be made before the end of—
- (a) the period of three months beginning with the date on which the notice was given; or

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- (b) such other period as the authorised body and the Lord Chancellor may agree.
- (3) When that period has expired the Lord Chancellor shall consider, in the light of any representations made under sub-paragraph (2), whether he proposes to make alterations of the qualification regulations or rules of conduct.
- (4) If the Lord Chancellor proposes to make alterations of the qualification regulations or rules of conduct he shall send a copy of—
 - (a) the alterations which he proposes to make; and
 - (b) any representations made under sub-paragraph (2),
 to the Consultative Panel, the Director and each of the designated judges.

Advice of Consultative Panel

- 19 (1) The Consultative Panel shall consider whether the alterations should be made.
- (2) The Lord Chancellor and the authorised body shall provide the Consultative Panel with such additional information as it may reasonably require.
- (3) When the Consultative Panel has completed its consideration it shall give such advice to the Lord Chancellor as it thinks fit.
- (4) The Consultative Panel shall publish any advice given by it under this paragraph.

Advice of Director General of Fair Trading

- 20 (1) The Director shall consider whether making the alterations would have, or be likely to have, any significant effect on competition.
- (2) The Lord Chancellor and the authorised body shall provide the Director with such additional information as he may reasonably require.
- (3) When the Director has completed his consideration he shall give such advice to the Lord Chancellor as he thinks fit.
- (4) The Director shall publish any advice given by him under this paragraph.
- (5) The Director shall, so far as practicable, exclude from anything published under sub-paragraph (4) any matter which relates to the affairs of a particular person (other than the authorised body) the publication of which would, or might in the Director's opinion, seriously and prejudicially affect the interests of that person.
- (6) Section 46 shall apply in relation to the investigation of any matter with a view to its consideration under this paragraph as it applies in relation to the investigation of any matter under section 45.

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Further representations by authorised body

- 21 (1) When the Lord Chancellor has received the advice of the Consultative Panel and the Director, he shall send a copy of the advice to the authorised body.
- (2) The authorised body shall be allowed a period of 28 days, beginning with the day on which the copy is sent to him, or such other period as the authorised body and the Lord Chancellor may agree, to make representations about the advice to the Lord Chancellor.

Advice of designated judges

- 22 (1) The Lord Chancellor shall send to each of the designated judges a copy of—
- (a) the advice of the Consultative Panel and the Director; and
 - (b) any representations made under paragraph 21(2).
- (2) Each of the designated judges shall then consider whether the alterations should be made.
- (3) The Lord Chancellor and the authorised body shall provide each of the designated judges with such additional information as he may reasonably require.
- (4) When each of the designated judges has completed his consideration he shall give such advice to the Lord Chancellor as he thinks fit.

Decision by Lord Chancellor

- 23 (1) After considering—
- (a) the advice given by the Consultative Panel and any representations made about it;
 - (b) the advice given by the Director and any representations made about it; and
 - (c) the advice given by each of the designated judges under paragraph 22,
- the Lord Chancellor shall decide whether to make the alterations.
- (2) When the Lord Chancellor has made his decision he shall notify the authorised body of it.
- (3) If the Lord Chancellor has decided to make the alterations he shall also notify the authorised body of the reasons for his decision.

Order effecting alterations

- 24 If the Lord Chancellor has decided to make the alterations he may make an order giving effect to the alterations.

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PART IV

REVOCATION OF DESIGNATION

Order in Council

- 25 (1) Where an Order in Council has been made designating a body as an authorised body for the purposes of section 27, or for the purposes of section 28, the Lord Chancellor may recommend to Her Majesty that an Order in Council be made revoking that designation.
- (2) A recommendation may be made under sub-paragraph (1) only if—
- (a) the authorised body has made a written request to the Lord Chancellor asking for it to be made;
 - (b) the authorised body has agreed in writing to its being made; or
 - (c) the Lord Chancellor is satisfied that the circumstances at the time when he is considering whether to make the recommendation are such that, had that body then been applying to become an authorised body, its application would have failed.

Requirement to seek advice

- 26 Where the Lord Chancellor considers that it may be appropriate for him to make a recommendation in reliance on paragraph 25(2)(c), he shall seek the advice of the Consultative Panel and the Director.

Advice of Consultative Panel

- 27 (1) The Consultative Panel shall carry out such investigations with respect to the authorised body as it considers appropriate.
- (2) The Lord Chancellor and the authorised body shall provide the Consultative Panel with such additional information as it may reasonably require.
- (3) When the Consultative Panel has completed its investigations it shall—
- (a) advise the Lord Chancellor as to whether or not there appear to be grounds for making the recommendation; and
 - (b) if its advice is that there appear to be such grounds, advise the Lord Chancellor as to the transitional and incidental provision (if any) which it considers should be included in any Order made in pursuance of it.
- (4) The Consultative Panel shall publish any advice given by it under this paragraph.

Advice of Director General of Fair Trading

- 28 (1) The Director shall consider whether revoking the designation would have, or be likely to have, any significant effect on competition.

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- (2) The Lord Chancellor and the authorised body shall provide the Director with such additional information as he may reasonably require.
- (3) When the Director has completed his consideration he shall give such advice to the Lord Chancellor as he thinks fit.
- (4) The Director shall publish any advice given by him under this paragraph.
- (5) The Director shall, so far as practicable, exclude from anything published under sub-paragraph (4) any matter which relates to the affairs of a particular person (other than the authorised body) the publication of which would, or might in the Director's opinion, seriously and prejudicially affect the interests of that person.
- (6) Section 46 shall apply in relation to the investigation of any matter with a view to its consideration under this paragraph as it applies in relation to the investigation of any matter under section 45.

Notice to authorised body

- 29 (1) When the Lord Chancellor has received the advice of the Consultative Panel and the Director, he may give to the body a notice containing—
 - (a) a copy of the advice; and
 - (b) a statement of the effect of an Order made in pursuance of the recommendation.
- (2) The notice shall invite the authorised body to make representations in writing to the Lord Chancellor.
- (3) Any such representations must be made before the end of—
 - (a) the period of three months beginning with the date on which the notice was given; or
 - (b) such other period as the authorised body and the Lord Chancellor may agree.

Notice to members of authorised body

- 30 (1) Where the Lord Chancellor—
 - (a) has given a notice to an authorised body under paragraph 29(1); or
 - (b) is proposing to make a recommendation in relation to an authorised body in reliance on paragraph 25(2)(a) or (b),he shall take such steps as are reasonably practicable to bring the matter to the attention of the members of the authorised body and of any other persons who, in his opinion, are likely to be affected by an Order made in pursuance of the recommendation.
- (2) Any such steps shall include inviting those members and other persons to make representations to the Lord Chancellor.
- (3) Any such representations—
 - (a) shall, except in such circumstances as the Lord Chancellor may specify, be in writing; and

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- (b) must be made before the end of the period of three months beginning with such date as may be specified by the Lord Chancellor.

Advice of designated judges

- 31 (1) The Lord Chancellor shall send to each of the designated judges—
- (a) a copy of any written representations made under paragraph 30 and a note of any oral representations made under that paragraph; and
 - (b) in a case where he is required to seek the advice of the Consultative Panel and the Director, a copy of the advice given to him by the Consultative Panel and the Director and of any representations made under paragraph 29.
- (2) Each of the designated judges shall then consider whether the Lord Chancellor should make the recommendation.
- (3) The Lord Chancellor and the authorised body shall provide each of the designated judges with such additional information as he may reasonably require.
- (4) When each of the designated judges has completed his consideration he shall give such advice to the Lord Chancellor as he thinks fit.

Consideration by Lord Chancellor

- 32 Before deciding whether to make the recommendation the Lord Chancellor shall consider—
- (a) any representations made under paragraph 30 and the advice given by each of the designated judges; and
 - (b) in a case where he is required to seek the advice of the Consultative Panel and the Director, the advice given to him by the Consultative Panel and the Director and of any representations made under paragraph 29.

The Order

- 33 (1) An Order made in pursuance of a recommendation under paragraph 25 may include any appropriate transitional and incidental provision.
- (2) Where an Order is made in relation to a body in pursuance of such a recommendation, the grant of any rights of audience, or rights to conduct litigation, to any person by the body shall cease to have effect, subject to any transitional provision included in the Order.
- (3) Where such an Order is made, the Lord Chancellor shall—
- (a) give the body written notice of the making of the Order and of his reasons for recommending that it be made;
 - (b) take such steps as are reasonably practicable to bring the making of the Order to the attention of the members of that body; and
 - (c) publish notice of the making of the Order in such manner as he considers appropriate for bringing it to the attention of persons

(other than those members) who, in his opinion, are likely to be affected by the Order.”