SCHEDULES

SCHEDULE 4

APPROVED REGULATORS

PART 2

DESIGNATION OF BODIES BY ORDER

Application to the Board

3 (1) This paragraph applies where a body wishes to authorise persons to carry on 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 body as an approved regulator in relation to the reserved legal activity or activities in question, and

(b) to approve what the body proposes as its regulatory arrangements if such an order is made ("the proposed regulatory arrangements").

(3) 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 regulatory arrangements,

(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, and

(d) the prescribed fee.

(4) 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.

(5) The proposed regulatory arrangements must, in particular, include—

(a) details of the authority which the applicant proposes to give persons to carry on activities which are reserved legal activities and of the nature of the persons to whom the authority is to be given,

(b) regulations (however they may be described) as to the education and training which persons must receive, and any other requirements which must be met by or in respect of them, in order for them to be authorised, and

(c) rules (however they may be described) as to the conduct required of persons in carrying on any activity by virtue of the authority.

(6) An applicant may, at any time, withdraw the application by giving notice to that effect to the Board.

Dismissal of application

4 (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

5 (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 6 to 8 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

6 (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 17 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

7 (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 17 in accordance with the recommendation applied for.

Advice of selected consultees

8 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

9 (1) The Board must give the Lord Chief Justice—

(a) a copy of any advice duly given under paragraphs 6 to 8, 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 17 in accordance with the recommendation applied for.

Information obtained by consultees

10 A person ("the consultee") to whom a copy of the application is given under paragraph 5(1) may, for the purposes of giving advice under paragraphs 6 to 9, 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

11 (1) The Board must give the applicant a copy of any advice duly given under paragraphs 6 to 9.

(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

12 (1) The Board must, as soon as practicable after the end of the period within which representations under paragraph 11 may be made, publish—

(a) any advice duly given under paragraphs 6 to 9, and

(b) any written representations duly made under paragraph 11 and the report (if any) prepared under that paragraph.

(2) Nothing in sub-paragraph (1) operates—

(a) to prevent a person who gives advice under paragraphs 6 to 9 from publishing that advice, or

(b) to prevent a person who makes representations under paragraph 11 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

13 (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, if an order were to be made under paragraph 17 designating the body in relation to that activity, the applicant would have appropriate internal governance arrangements in place at the time the order takes effect,

(b) that, if such an order were to be made, the applicant would be competent, and have sufficient resources, to perform the role of approved regulator in relation to the reserved legal activity at that time,

(c) that the applicant's proposed regulatory arrangements make appropriate provision,

(d) that the applicant's proposed regulatory arrangements comply with the requirement imposed by sections 52 and 54 (resolution of regulatory conflict), and

(e) that those arrangements comply with the requirements imposed by sections 112 and 145 (requirements imposed in relation to the handling of complaints).

(3) The rules made for the purposes of sub-paragraph (2)(a) 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

14 (1) After considering—

(a) the application and accompanying material,

(b) any other information provided by the applicant,

(c) any advice duly given under paragraphs 6 to 9,

(d) any representations duly made under paragraph 11, 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.

15 (1) Where an application is made under this Part, the Board must give the decision notice under paragraph 14 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 consulted—

(a) the OFT,

(b) the Consumer Panel, and

(c) the Lord Chief Justice.

(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

16 (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 an approved regulator 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 6 to 9,

(b) any written representations duly made under paragraph 11 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

17 (1) Where a recommendation is made to the Lord Chancellor under paragraph 16, 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) 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.

(4) 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.

(5) The Lord Chancellor must publish the decision notice.

Approval of regulatory arrangements

18 (1) Where an order is made by the Lord Chancellor under paragraph 17, the applicant's proposed regulatory arrangements 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 regulatory arrangements were a reference to those arrangements 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).