

SCHEDULES

SCHEDULE 4

Sections 29 and 30.

AUTHORISATION AND APPROVAL

PART I

AUTHORISATION OF BODIES

- 1 (1) Any professional or other body which wishes to become an authorised body for the purposes of section 27 or 28 (“the applicant”) shall send to the Advisory Committee—
 - (a) a draft of the qualification regulations which it proposes to apply to those of its members to whom it wishes to grant—
 - (i) any right of audience; or
 - (ii) any right to conduct litigation;
 - (b) a draft of the rules of conduct which it proposes to apply to those of its members exercising any such right granted by it; and
 - (c) a statement of the rights which it proposes to grant (“the proposed rights”) and in relation to which it wishes to have those regulations and rules approved.
- (2) Those documents shall be accompanied by such explanatory material (including material about the applicant’s constitution and activities) as the applicant considers is likely to be needed by the Advisory Committee if the Committee is to carry out its functions under this Part of this Schedule properly.
- (3) The applicant shall provide the Advisory Committee with such additional information as the Committee may reasonably require.
- (4) It shall be the duty of the Advisory Committee to consider the applicant’s draft qualification regulations and rules of conduct in relation to the proposed rights.
- (5) When it has completed its consideration, the Advisory Committee shall advise the applicant of the extent to which (if at all) the draft regulations or rules should, in the Committee’s opinion, be amended in order to make them better designed—
 - (a) to further the statutory objective; or
 - (b) to comply with the general principle.
- (6) In subsequently making its qualification regulations and rules of conduct, with a view to applying for authorisation for the purposes of section 27 or 28, the applicant shall have regard to any advice given to it by the Advisory Committee under this paragraph.

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Submission to Lord Chancellor

- 2 (1) Where the applicant has complied with paragraph 1 and wishes to proceed with its application for authorisation, it shall apply to the Lord Chancellor for its qualification regulations and rules of conduct to be approved in relation to the proposed rights.
- (2) An application under this paragraph shall—
- (a) be in writing;
 - (b) specify whether approval is sought for the purposes of section 27 or 28; and
 - (c) be accompanied by—
 - (i) a copy of the regulations and rules;
 - (ii) such explanatory material as the applicant considers is likely to be needed for the purposes of this Part of this Schedule; and
 - (iii) a statement of the proposed rights.
- (3) The applicant shall provide the Lord Chancellor with such additional information as he may reasonably require.
- (4) On receipt of such an application, the Lord Chancellor shall—
- (a) send a copy of the application and of any documents provided under subparagraph (2)(c) or (3) to the Advisory Committee and to each of the designated judges; and
 - (b) ask the Committee for advice as to whether the regulations and rules should be approved for the purposes of section 27 or 28.

Advice of the Director General of Fair Trading

- 3 (1) The Lord Chancellor shall also send copies of the documents mentioned in paragraph 2(4)(a) to the Director.
- (2) The Director shall consider whether the regulations and rules would have, or would be likely to have, the effect of restricting, distorting or preventing competition to any significant extent.
- (3) When the Director has completed his consideration he shall give such advice to the Lord Chancellor as he thinks fit.
- (4) The Director may publish any advice given by him under this paragraph.
- (5) The Director shall, so far as practicable, exclude from anything published under subparagraph (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.
- 4 Section 46 shall apply in relation to the investigation of any matter with a view to its consideration under paragraph 3, as it applies in relation to the investigation of any matter under section 45.

Approval by Lord Chancellor and designated judges

- 5 (1) When he has received the advice of the Advisory Committee and that of the Director, the Lord Chancellor 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, to make representations about the advice—

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- (a) to the Lord Chancellor; or
 - (b) where the Lord Chancellor appoints a person for the purposes of this sub-paragraph, to that person.
- (3) When the period of 28 days has expired the Lord Chancellor shall consider, in the light of the advice and of any representations duly made by the applicant under sub-paragraph (2)—
 - (a) whether the regulations and rules should be approved for the purposes of section 27 or 28; and
 - (b) whether the application should be approved.
- (4) When the Lord Chancellor has complied with sub-paragraph (3) he shall—
 - (a) send to each designated judge a copy of—
 - (i) the advice; and
 - (ii) any representations duly made by the applicant under sub-paragraph (2); and
 - (b) inform each of those judges of the answers which he proposes to give to the questions which he has considered under sub-paragraph (3).
- (5) It shall then be the duty of each designated judge to consider the regulations and rules and, in the light of the other material sent to him by the Lord Chancellor under sub-paragraph (4), to consider the questions considered by the Lord Chancellor under sub-paragraph (3).
- (6) The applicant shall provide each designated judge with such additional information about the regulations and rules as he may reasonably require.
- (7) If the Lord Chancellor, or any of the designated judges, is satisfied that approving the application would be incompatible with the statutory objective or the general principle (whether because of any provision of the regulations or rules, or for any other reason), he shall refuse to approve the application.
- (8) When each designated judge has discharged his duties under this paragraph he shall notify the Lord Chancellor in writing both of his decision and of his reasons for reaching it.
- (9) When—
 - (a) the Lord Chancellor has discharged his duties under this paragraph; and
 - (b) the designated judges have notified him of their decisions,the Lord Chancellor shall notify the applicant of the result of its application.
- (10) If the Lord Chancellor or any of the designated judges has refused to approve the application it shall fail.
- (11) The Lord Chancellor shall, if the applicant applies to him in writing, notify the applicant of—
 - (a) his reasons for reaching his decision; and
 - (b) the reasons given by each designated judge for reaching his decision.

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PART II

APPROVAL REQUIRED BY SECTION 29

Submission of proposals to Advisory Committee

- 6 (1) Where an authorised body proposes to make any alteration to its qualification regulations or rules of conduct which is required by section 29(3) to be approved under this Part of this Schedule, it shall send to the Advisory Committee a copy of—
- (a) its qualification regulations;
 - (b) its rules of conduct; and
 - (c) the proposed amending regulations or rules.
- (2) Where an authorised body proposes to make any alteration in the rights granted by it which calls for its qualification regulations and rules of conduct to be approved under section 29(4), it shall send to the Advisory Committee a copy of—
- (a) its qualification regulations;
 - (b) its rules of conduct; and
 - (c) a statement of the proposed alteration to the rights in question.
- (3) The documents sent to the Advisory Committee by the authorised body under sub-paragraph (1) or (2) shall be accompanied by such explanatory material as it considers is likely to be needed by the Advisory Committee in order for the Committee to be able to understand fully the implications of the proposed alteration.
- (4) The applicant shall provide the Advisory Committee with such additional information as the Committee may reasonably require.

Consideration by Advisory Committee

- 7 (1) It shall be the duty of the Advisory Committee to consider the applicant's regulations and rules and the proposed alteration.
- (2) When it has completed its consideration, the Advisory Committee shall advise the applicant of the extent to which (if at all) its qualification regulations or rules of conduct should, in the Committee's opinion, be amended in order better to—
- (a) further the statutory objective; or
 - (b) comply with the general principle.

Submission to Lord Chancellor

- 8 (1) If, after—
- (a) receiving the Advisory Committee's advice; and
 - (b) making the alteration in question,
- the applicant wishes the approval required by section 29(3) or (as the case may be) (4) to be given, it shall apply to the Lord Chancellor under this paragraph.
- (2) An application under this paragraph shall—
- (a) be in writing;
 - (b) specify the purposes for which approval is sought; and
 - (c) be accompanied by—

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- (i) a copy of the amending regulations or rules or (as the case may be) of the statement mentioned in paragraph 6(2)(c) (“the statement”); and
 - (ii) such explanatory material as the applicant considers is likely to be needed for the implications of the alteration to be fully understood.
- (3) The applicant shall provide the Lord Chancellor with such additional information as he may reasonably require.
- (4) On receipt of such an application, the Lord Chancellor shall—
 - (a) send a copy of the application and of any documents provided under sub-paragraph (2)(c) or (3) to the Advisory Committee and to each of the designated judges; and
 - (b) refer the application to the Committee for advice.

Advice of the Director General of Fair Trading

- 9 (1) The Lord Chancellor shall also send a copy of the documents mentioned in paragraph 8(4)(a) to the Director.
- (2) The Director shall consider whether the amending regulations or rules would have, or would be likely to have, the effect of restricting, distorting or preventing competition to any significant extent.
- (3) When the Director has completed his consideration he shall give such advice to the Lord Chancellor as he thinks fit.
- (4) The Director may 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.
- 10 Section 46 shall apply in relation to the investigation of any matter with a view to its consideration under paragraph 9, as it applies in relation to the investigation of any matter under section 45.

Approval by Lord Chancellor and designated judges

- 11 (1) When he has received the advice of the Advisory Committee and that of the Director, the Lord Chancellor 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, to make representations about the advice—
 - (a) to the Lord Chancellor; or
 - (b) where the Lord Chancellor appoints a person for the purposes of this sub-paragraph, to that person.
- (3) When the period of 28 days has expired the Lord Chancellor shall consider, in the light of the advice and of any representations duly made by the applicant under sub-paragraph (2) whether the approval required by section 29(3) or (4) should be given.
- (4) When the Lord Chancellor has complied with sub-paragraph (3) he shall—
 - (a) send to each designated judge a copy of—
 - (i) the advice; and

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- (ii) any representations duly made by the applicant under sub-paragraph (2);
 - (b) inform each designated judge as to whether he proposes to give the required approval; and
 - (c) where he proposes to withhold that approval, inform each designated judge of his reason for doing so.
- (5) It shall then be the duty of each designated judge to consider, in the light of the material sent to him by the Lord Chancellor under sub-paragraph (4), whether the required approval should be given.
- (6) The applicant shall provide each designated judge with such additional information as may reasonably be required.
- (7) If the Lord Chancellor, or any of the designated judges, is satisfied that the alteration is incompatible with the statutory objective or the general principle, he shall refuse to give the required approval.
- (8) When each designated judge has discharged his duties under this paragraph he shall notify the Lord Chancellor in writing both of his decision and of his reasons for reaching it.
- (9) When—
- (a) the Lord Chancellor has discharged his duties under this paragraph; and
 - (b) the designated judges have notified him of their decisions,
- the Lord Chancellor shall notify the applicant of the result of its application.
- (10) If the Lord Chancellor or any of the designated judges refuses to give the required approval, the alteration in question shall not have effect.
- (11) The Lord Chancellor shall, if the applicant applies to him in writing, notify the applicant of—
- (a) his reasons for reaching his decision; and
 - (b) the reasons given by each designated judge for reaching his decision.

PART III

REVOCATION OF DESIGNATION OF AUTHORISED BODY

Role of Advisory Committee

- 12 (1) Where the Lord Chancellor is considering whether to recommend the making of a revoking Order by virtue of section 30(2)(c) or is advised by one or more of the designated judges that there are grounds for making such a recommendation, he shall seek the advice of the Advisory Committee.
- (2) The Advisory Committee shall carry out such investigations with respect to the authorised body concerned as it considers appropriate.
- (3) Where—
- (a) the Lord Chancellor has not sought the advice of the Advisory Committee under sub-paragraph (1); but

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- (b) the Committee has reason to believe that there may be grounds for recommending that an Order be made under section 30(2)(c) with respect to an authorised body,

it may carry out such investigations with respect to the authorised body as it considers appropriate.

- (4) On concluding any investigation carried out under sub-paragraph (2) or (3), the Advisory Committee shall—
 - (a) advise the Lord Chancellor as to whether or not there appear to be grounds for recommending the making of an Order under section 30 with respect to the authorised body concerned; 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 made under section 30(4) with respect to the authorised body concerned.

Duty to comply with requests for information

- 13 (1) Where the Advisory Committee is carrying out an investigation under paragraph 12 it may require the authorised body concerned to provide it with such information, including copies of such documents, as it may reasonably require for the purposes of the investigation.
- (2) No person shall be required under sub-paragraph (1) to provide any information, or produce any copy of a document, which he could not be compelled to provide or produce in civil proceedings before a court.
- (3) Where an authorised body fails, without reasonable excuse, to comply with a request made to it by the Committee under sub-paragraph (1), section 30(2)(c) shall be taken to have been satisfied in relation to that body.

Notice to authorised body

- 14 (1) If the Advisory Committee advises the Lord Chancellor that there are grounds for recommending the making of an Order under section 30 with respect to an authorised body, the Lord Chancellor shall send written notice of that advice, and of the effect of such an Order, to that body.
- (2) Any such notice shall invite the authorised body to make representations in writing to the Lord Chancellor or such person as he may appoint for the purpose.
- (3) Any such representations must be made before the end of the period of three months beginning with the date on which the notice was given.

Notice to members of authorised body

- 15 (1) Where—
 - (a) the Lord Chancellor has given notice to any authorised body under paragraph 14(1); or
 - (b) is proposing to recommend the making of an Order with respect to an authorised body under section 30, by virtue of subsection (2)(a) or (b) of that section,

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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 any Order made under section 30 with respect to that body.

- (2) Any such steps shall include inviting those members and other persons to make representations to the Lord Chancellor or (as the case may be) to the person appointed by him for the purpose.
- (3) Any such representations—
 - (a) shall, except in such circumstances as the Lord Chancellor may specify, be in writing; and
 - (b) must be made before the end of the period of three months beginning with such date as may be fixed by the Lord Chancellor.

Consideration by Lord Chancellor and designated judges

- 16 (1) It shall be the duty of the Lord Chancellor to consider—
- (a) any advice given to him by the Advisory Committee under paragraph 12; and
 - (b) any representations duly made under paragraph 14 or 15.
- (2) Having done so, the Lord Chancellor shall—
- (a) send to each of the designated judges a copy of any such advice and of any such representations (including a note of any oral representations); and
 - (b) inform each of them of his view as to whether or not, having regard to the general principle, the making of an Order under section 30 with respect to the authorised body in question should be recommended.
- (3) It shall be the duty of each of the designated judges—
- (a) to consider the information sent to him by the Lord Chancellor, having regard to the general principle;
 - (b) to inform the Lord Chancellor of his own decision in the matter; and
 - (c) to give his reasons, in writing, for his decision.
- (4) No Order under section 30 shall be made with respect to the authorised body unless the Lord Chancellor and each of the designated judges have decided that it should be made.