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SCHEDULES

VALID FROM 01/04/2011

SCHEDULE 18

Section 186

IMMIGRATION ADVICE AND IMMIGRATION SERVICES

PART 1

QUALIFYING REGULATORS

Designation orders

- 1 In this Part of this Schedule “designation order” means an order made under section 86A(6) of the Immigration and Asylum Act 1999 (c. 33) (designated qualifying regulators entitled to authorise persons to provide immigration advice and immigration services).

Continuity of existing rights

- 2 Each of the following bodies is a qualifying regulator for the purposes of Part 5 of the Immigration and Asylum Act 1999—
- (a) the Law Society;
 - (b) the Institute of Legal Executives;
 - (c) the General Council of the Bar.

Application to become a qualifying regulator

- 3 (1) This paragraph applies where a body wishes to become a qualifying regulator for the purposes of Part 5 of the Immigration and Asylum Act 1999.
- (2) A body may apply to the Board for the Board—
- (a) to designate the body as a qualifying regulator for those purposes, and
 - (b) to approve what the applicant proposes as its regulatory arrangements if a designation order is made (“the proposed regulatory arrangements”).
- (3) But a body may make an application under this paragraph only if—
- (a) it is an approved regulator (other than the Board), or
 - (b) it has made an application under Part 2 of Schedule 4 (designation of approved regulators).
- (4) 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) details of the applicant's proposed regulatory arrangements,

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- (b) such explanatory material as the applicant considers is likely to be needed for the purposes of this Part of this Schedule, and
 - (c) the prescribed fee.
- (5) The prescribed fee is the fee prescribed in, or determined in accordance with, rules made by the Board with the consent of the Lord Chancellor.
- (6) An applicant may, at any time, withdraw the application by giving notice to that effect to the Board.

Consultation and representations

- 4 Paragraphs 4 to 12 of Schedule 4 (consultation requirements etc in relation to applications for designation as approved regulator) apply in relation to an application under paragraph 3 as they apply in relation to an application under paragraph 3 of that Schedule, but as if—
- (a) in paragraphs 6(2), 7(2), and 9(3) of that Schedule the references to making an order under paragraph 17 in accordance with the recommendation were references to making a designation order in respect of the applicant, and
 - (b) in paragraph 6(2) of that Schedule the reference to the market for reserved legal services were a reference to the market for immigration advice and immigration services.

Determination of application

- 5 (1) The Board must make rules specifying how it will determine applications under paragraph 3.
- (2) Rules under sub-paragraph (1) must, in particular, provide that the Board may grant an application only if it is satisfied—
- (a) that, if a designation order were to be made in relation to the applicant, the applicant would have appropriate internal governance arrangements in place at the time the order takes effect,
 - (b) that, if such an order were made, the applicant would be competent to perform the role of designated qualifying regulator (within the meaning of section 86A of the Immigration and Asylum Act 1999 (c. 33)) at that time,
 - (c) that the arrangements made by the applicant for authorising persons to provide immigration advice or immigration services provide that persons may not be so authorised unless they are persons who are also authorised by the applicant to carry on activities which are reserved legal activities,
 - (d) that the applicant's proposed regulatory arrangements make appropriate provision, and
 - (e) that the applicant's proposed regulatory 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

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- (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.
- (4) In subsection (2)(c) the reference to persons who are also authorised by the applicant to carry on activities which are reserved legal activities includes, in relation to any application by the Law Society, registered foreign lawyers (within the meaning of section 89 of the Courts and Legal Services Act 1990).
- 6 (1) After considering—
- (a) the application and accompanying material,
 - (b) any other information provided by the applicant,
 - (c) any advice duly given and representations duly made by virtue of paragraph 4, and
 - (d) any other information which the Board considers relevant to the application,
- the Board must decide whether to grant the application.
- (2) The Board must give notice of its decision to the applicant (“the decision notice”).
- (3) Where the Board decides to refuse the application, the decision notice must specify the reasons for that decision.
- (4) The Board must publish the decision notice.
- (5) Paragraph 15 of Schedule 4 (period within which decision must be made) applies in relation to a decision notice under this paragraph as it applies in relation to a decision notice under paragraph 14 of that Schedule.

Effect of application

- 7 (1) Where an application is granted under paragraph 6, the decision notice must specify that the applicant is a qualifying regulator for the purposes of Part 5 of the Immigration and Asylum Act 1999 (c. 33).
- (2) Where an application is granted under paragraph 6, the proposed regulatory arrangements are at the same time treated as having been approved by the Board.
- (3) But if the application was made in reliance upon paragraph 3(3)(b), the applicant's status as such a qualifying regulator and the approval of its proposed regulatory arrangements under sub-paragraph (2) are conditional upon the Lord Chancellor making an order under Part 2 of Schedule 4 designating the body as an approved regulator in relation to one or more reserved legal activities.

Loss of qualifying regulator status

- 8 (1) Where a qualifying regulator—
- (a) ceases to be an approved regulator, or
 - (b) ceases to be a designated qualifying regulator within the meaning of section 86A of the Immigration and Asylum Act 1999 by virtue of an order under subsection (3) or (4) of that section,
- it also ceases to be a qualifying regulator.

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- (2) But sub-paragraph (1) is without prejudice to a body's ability to make a further application under paragraph 3.
- (3) If a body in the list in paragraph 2 ceases to be a qualifying regulator by virtue of sub-paragraph (1), the Lord Chancellor must, by order, remove it from that list.

PART 2

AMENDMENTS OF THE IMMIGRATION AND ASYLUM ACT 1999 (C. 33)

- 9 The Immigration and Asylum Act 1999 is amended in accordance with this Part of this Schedule.
- 10 In section 82(1) (interpretation of Part 5), after the definition of “designated professional body” insert—
- ““designated qualifying regulator” has the meaning given by section 86A;”.
- 11 In section 83 (the Immigration Services Commissioner), after subsection (6) insert—
- “(6A) The duties imposed on the Commissioner by subsections (3) and (5) apply in relation to persons within section 84(2)(ba) only to the extent that those duties have effect in relation to the Commissioner's functions under section 92 or 92A.”
- 12 (1) Section 84 (provision of immigration services) is amended as follows.
- (2) In subsection (2)—
- (a) after paragraph (b) insert—
- “(ba) a person authorised to provide immigration advice or immigration services by a designated qualifying regulator;”, and
- (b) in paragraph (c)(ii) after “(b)” insert “ or (ba) ”.
- (3) After subsection (3) insert—
- “(3A) A person's entitlement to provide immigration advice or immigration services by virtue of subsection (2)(ba)—
- (a) is subject to any limitation on that person's authorisation imposed by the regulatory arrangements of the designated qualifying regulator in question, and
- (b) does not extend to the provision of such advice or services by the person other than in England and Wales (regardless of whether the persons to whom they are provided are in England and Wales or elsewhere).
- (3B) In subsection (3A) “regulatory arrangements” has the same meaning as in the Legal Services Act 2007 (see section 21 of that Act).”
- 13 (1) Section 86 (designated professional bodies) is amended as follows.
- (2) Omit subsections (1)(a), (d) and (e) and (4)(b).
- (3) In subsection (5)(a) omit “England and Wales or”.

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- (4) In subsection (6)—
- (a) omit paragraph (a), and
 - (b) in paragraph (b) for “it” substitute “ the order ”.
- (5) In subsection (8) after “that a body” insert “ (other than a body in England and Wales) ”.

14 After section 86 insert—

“86A Designated qualifying regulators

- (1) “Designated qualifying regulator” means a body which is a qualifying regulator and is listed in subsection (2).
- (2) The listed bodies are—
 - (a) the Law Society;
 - (b) the Institute of Legal Executives;
 - (c) the General Council of the Bar.
- (3) The Secretary of State may by order remove a body from the list in subsection (2) if the Secretary of State considers that the body has failed to provide effective regulation of relevant authorised persons in their provision of immigration advice or immigration services.
- (4) If a designated qualifying regulator asks the Secretary of State to amend subsection (2) so as to remove its name, the Secretary of State may by order do so.
- (5) Where, at a time when a body is listed in subsection (2), the body ceases to be a qualifying regulator by virtue of paragraph 8(1)(a) of Schedule 18 to the Legal Services Act 2007 (loss of approved regulator status), the Secretary of State must, by order, remove it from the list.
- (6) If the Secretary of State considers that a body which—
 - (a) is a qualifying regulator,
 - (b) is not a designated qualifying regulator, and
 - (c) is capable of providing effective regulation of relevant authorised persons in their provision of immigration advice or immigration services,ought to be designated, the Secretary of State may, by order, amend the list in subsection (2) to include the name of that body.
- (7) If the Secretary of State is proposing to act under subsection (3) or (6), the Secretary of State must, before doing so, consult the Commissioner.
- (8) If the Secretary of State is proposing to act under subsection (3), the Secretary of State must, before doing so, also —
 - (a) notify the body concerned of the proposal and give it a reasonable period within which to make representations, and
 - (b) consider any representations duly made.
- (9) An order under subsection (3) or (6) requires the approval of the Lord Chancellor.

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- (10) If the Legal Services Board considers that a designated qualifying regulator is failing to provide effective regulation of relevant authorised persons in their provision of immigration advice or immigration services, the Legal Services Board must make a report to this effect to—
- (a) the Secretary of State, and
 - (b) the Lord Chancellor.
- (11) In this section—
- “qualifying regulator” means a body which is a qualifying regulator for the purposes of this Part of this Act by virtue of Part 1 of Schedule 18 to the Legal Services Act 2007 (approved regulators approved by the Legal Services Board in relation to immigration matters);
- “relevant authorised persons”, in relation to a designated qualifying regulator, means persons who are authorised by the designated qualifying regulator to provide immigration advice or immigration services.”
- 15 (1) Section 90 (orders by disciplinary bodies) is amended as follows.
- (2) In subsection (2), for paragraph (a) substitute—
- “(a) appearing to the Secretary of State to be established for the purpose of hearing disciplinary charges against—
- (i) members of a designated professional body, or
 - (ii) persons regulated by designated qualifying regulators; and”.

(3) In subsection (3) after “body” insert “ or designated qualifying regulator ”.

(4) In subsection (5)—

 - (a) after “means” insert “—
 - (a)”,
 - and - (b) after “that body” insert “, or
 - (b) a person who is authorised by the designated qualifying regulator concerned to provide immigration advice or immigration services.”

16 In section 166(4) (orders requiring approval by Parliament), after paragraph (d) insert—

“(da) section 86A(3).”.

17 (1) Schedule 5 (the Immigration Services Commissioner) is amended as follows.

(2) In paragraph 3 (code of standards)—

 - (a) after sub-paragraph (3)(a) insert—

“(aa) a person who is authorised by a designated qualifying regulator to provide immigration advice or immigration services;”,

 - (b) in sub-paragraph (3)(b) after “paragraph (a)” insert “ or (aa) ”,
 - (c) after sub-paragraph (6)(a) insert—

“(aa) each of the designated qualifying regulators;”, and

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- (d) omit sub-paragraph (6)(b).
- (3) In paragraph 4 (extension of scope of the code)—
 - (a) omit sub-paragraph (2)(b),
 - (b) in sub-paragraph (3)(a) omit “England and Wales or”, and
 - (c) omit sub-paragraph (4)(a).
- (4) In paragraph 5 (investigation of complaints)—
 - (a) in sub-paragraph (3), for the words from “but” to the end substitute— “ but not if the complaint is excluded by sub-paragraph (3A). ”,
 - (b) after that sub-paragraph insert—
 - “(3A) A complaint is excluded if—
 - (a) it relates to a person who is excluded from the application of subsection (1) of section 84 by subsection (6) of that section, or
 - (b) it relates to a person within section 84(2)(ba).”

PROSPECTIVE

PART 3

TRANSITIONAL PROVISION

The transitional period

- 18 (1) In this Part of this Schedule references to “the transitional period” are to the period which—
- (a) begins with the day appointed for the coming into force of section 13 (entitlement to carry on reserved legal activities), and
 - (b) ends with the day appointed by the Lord Chancellor by order for the purposes of this paragraph.
- (2) Different days may be appointed under sub-paragraph (1)(b) for different purposes.
- (3) An order may be made under sub-paragraph (1)(b) only on the recommendation of the Board.

Barristers etc

- 19 (1) During the transitional period, every barrister is deemed to be authorised by the General Council of the Bar to provide immigration advice and immigration services.
- (2) That authority is exercisable in accordance with, and subject to, the regulatory arrangements of the General Council of the Bar.
- (3) A person is not authorised under sub-paragraph (1) unless the person has in force a certificate issued by the General Council of the Bar authorising the person to practise as a barrister.

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- 20 (1) During the transitional period, every registered European lawyer registered with the Inns of Court and the General Council of the Bar is deemed to be authorised by the General Council of the Bar to provide immigration advice and immigration services if the registered European lawyer is entitled to provide immigration advice and immigration services under his home professional title by virtue of the European regulations.
- (2) That authority is exercisable in accordance with, and subject to, the regulatory arrangements of the General Council of the Bar (as they apply to the registered European lawyer by virtue of the European regulations).
- (3) In this paragraph—
 “European regulations” means the European Communities (Lawyer’s Practice) Regulations 2000 (S.I. 2000/1119);
 “home professional title” and “registered European lawyer” have the same meaning as in the European regulations.
- Solicitors etc*
- 21 (1) During the transitional period, each of the following is deemed to be authorised by the Law Society to provide immigration advice and immigration services—
- (a) every qualified solicitor;
 - (b) every registered foreign lawyer (within the meaning of section 89 of the Courts and Legal Services Act 1990 (c. 41));
 - (c) every legal partnership (within the meaning of paragraph 7(4) of Schedule 5);
 - (d) every body recognised under section 9 of the Administration of Justice Act 1985 (c. 61).
- (2) That authority is exercisable in accordance with, and subject to, the regulatory arrangements of the Law Society.
- (3) “Qualified solicitor” means a person who is qualified under section 1 of the Solicitors Act 1974 (c. 47) to act as a solicitor.
- 22 (1) During the transitional period, every registered European lawyer registered with the Law Society is deemed to be authorised by the Law Society to provide immigration advice and immigration services if the registered European lawyer is entitled to provide immigration advice and immigration services under his home professional title by virtue of the European regulations.
- (2) That authority is exercisable in accordance with, and subject to, the regulatory arrangements of the Law Society (as they apply to the registered European lawyer by virtue of the European regulations).
- (3) In this paragraph—
 “European regulations” means the European Communities (Lawyer’s Practice) Regulations 2000 (S.I. 2000/1119);
 “home professional title” and “registered European lawyer” have the same meaning as in the European regulations.

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Legal Executives

- 23 (1) During the transitional period, a person who is authorised by the Institute of Legal Executives to practise as a member of the profession of legal executives is deemed to be authorised by that Institute to provide immigration advice and immigration services.
- (2) That authority is exercisable in accordance with and subject to the regulatory arrangements of the Institute of Legal Executives.
- (3) A person is not authorised under sub-paragraph (1) unless the person has in force a certificate issued by the Institute of Legal Executives authorising the person to practise as a legal executive.

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