

**Status:** Point in time view as at 14/10/2008. This version of this part contains provisions that are not valid for this point in time.

**Changes to legislation:** There are currently no known outstanding effects for the Legal Services Act 2007, Part 1. (See end of Document for details)

## SCHEDULES

VALID FROM 01/04/2011

### SCHEDULE 18

#### 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.

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