

The Department for Constitutional Affairs

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Guide to making an Application for:  
Designation as an Authorised Body

or

Approval of Alterations of  
Qualification Regulations or Rules of Conduct

## Who is the Guide for?

1. This guide is addressed to any organisation which is considering making an application to the Secretary of State under Schedule 4 to the Courts and Legal Services Act 1990 (as substituted by Schedule 5 to the Access to Justice Act 1999) for:
  - (a) designation as a body authorised to grant rights of audience or rights to conduct litigation to any of its members, or
  - (b) approval of alterations to its qualification regulations or rules of conduct.
2. The aim of this guide is to explain to potential applicants:
  - (i) the statutory framework,
  - (ii) the procedures they will have to follow, and
  - (iii) the issues they will need to address in their application.

## The Statutory Framework

3. Section 17(1) of the Courts and Legal Services Act 1990 sets out the government's general statutory objective for the development of legal services in England and Wales as: -

“... the development of legal services in England and Wales (and in particular the development of advocacy, litigation, conveyancing and probate services), by making provision for new or better ways of providing such services and a wider choice of persons providing them, while maintaining the proper and efficient administration of justice”.
4. The relevant statutory provisions under which the Secretary of State is required to consider applications for designation as an Authorised Body or to consider applications for alterations of Qualification Regulations or Rules of Conduct from existing authorised bodies are set out in Part II of, and Schedule 4 to, the 1990 Act (as amended by the 1999 Act).
5. Section 17(3) states that:

“As a general principle the question whether a person should be granted a right of audience, or be granted a right to conduct litigation in relation to any court or proceedings, should be determined only by reference to-

  - (a) whether he is qualified in accordance with the educational and training requirements appropriate to the court or proceedings;
  - (b) whether he is a member of a professional or other body which –

- (i) has rules of conduct (however described) governing the conduct of its members;
  - (ii) has an effective mechanism for enforcing the rules of conduct; and
  - (iii) is likely to enforce them;
- (c) whether, in the case of a body whose members are or will be providing advocacy services, the rules of conduct make satisfactory provision in relation to the court or proceedings in question requiring any such member not to withhold those services –
- (i) on the ground that the nature of the case is objectionable to him or to any section of the public;
  - (ii) on the ground that the conduct, opinions or beliefs of the prospective clients are unacceptable to him or to any section of the public;
  - (iii) on any ground relating to the source of any financial support which may properly be given to the prospective client for the proceedings in question (for example, on the ground that such support will be available under the Legal Aid Act 1988); and
- (d) whether the rules of conduct are, in relation to the court or proceedings, appropriate in the interests of the proper and efficient administration of justice.”
6. A person has a right of audience before a court only in the circumstances provided for in section 27(2) of the 1990 Act. One of these circumstances is set out in section 27(2)(a) as follows:
- “(i) he has a right of audience before that court in relation to those proceedings granted by an appropriate authorised body; and
- (ii) that body’s qualification regulations and rules of conduct have been approved for the purposes of this section, in relation to the granting of that right”.
7. By section 27(9), for the purposes of this section an “authorised body” means the General Council of the Bar, the Law Society, and “any professional or other body which has been designated by Order in Council as an authorised body for the purposes of this section”. The “appropriate authorised body” is the authorised body granting the right and of which the person is a member. The qualification regulations and rules of conduct relating to the right must be approved for these purposes by the Secretary of State.
8. Similarly, a person has a right to conduct litigation, or any category of litigation, only in the circumstances provided for in section 28(2) of the 1990 Act, one of these circumstances being set out in section 28(2)(a) as follows:
- “(i) he has a right to conduct litigation in relation to those proceedings granted by an appropriate authorised body; and
- (ii) that body’s qualification regulations and rules of conduct have been approved for the purposes of this section, in relation to the granting of that right”.

9. By section 28(5), for the purposes of this section an “authorised body” means the General Council of the Bar, the Institute of Legal Executives, the Law Society and “any professional or other body which has been designated by Order in Council as an authorised body for the purposes of this section”. The “appropriate authorised body” is the authorised body granting the right and of which the person is a member. The qualification regulations and rules of conduct relating to the right must be approved for these purposes by the Secretary of State.
10. Part I of Schedule 4 to the 1990 Act sets out the procedure by which a body should apply for designation as an authorised body. This procedure is considered in detail below. The relevant provisions are set out in Annex A to this Guide.
11. Where such an application is granted, the qualification regulations and rules of conduct of the body will be approved for the purposes of section 27 or 28 (as applicable) in relation to the rights which the body is authorised to grant.
12. Where an authorised body makes any alteration to its qualification regulations or rules of conduct which relate to the rights of audience or rights to conduct litigation granted by it, the alteration will not have effect unless it has been approved by the Secretary of State.
13. Part II of Schedule 4 to the 1990 Act sets out the procedure by which an authorised body should apply for approval of such an alteration. These procedures are considered in detail below. The relevant provisions are set out in Annex B to this Guide.

#### Application for Designation as an Authorised Body

14. If a professional or other body wishes to grant rights of audience or rights to conduct litigation to any of its members, the body should apply in writing to the Secretary of State, asking him to:
  - (i) recommend to Her Majesty that an Order in Council is made designating the body as an authorised body for the purposes of section 27 of the 1990 Act (if it proposes to grant rights of audience) or section 28 (if it proposes to grant rights to conduct litigation); and
  - (ii) approve the proposed qualification regulations and rules of conduct in relation to the proposed rights.

**Note:** It would be helpful if the applicant would nominate one individual as the main point of contact in connection with the application.

15. **THE APPLICATION**

The application should set out the nature and scope of the rights the body wishes to grant to its members. It must demonstrate that the members to whom it will grant the rights will be properly qualified to undertake these rights and that the rules of conduct

proposed will be appropriate and will be effectively enforced. In addressing these questions the following issues should be covered:

(i) **Education and Training**

- what are the entrance requirements for membership of the body,
- what education, training and/or working experience will those members who seek the new rights be required to undertake in order to ensure that they have adequate knowledge, skill and experience,
- how the education and training is to be delivered and by whom,
- where applicable, the body should explain the justification for its entrance/qualification requirements or length of working experience
- where appropriate the body should set out full details of, and a justification for, any recognition of ‘on the job’ training towards the award of a qualification, as well as any independent assessments of such training and/or examination standards required or specified by the body

(ii) **Continuing Professional Development**

- are members required to keep skills and knowledge up to date, and more generally to maintain knowledge, skills and personal qualities in order to perform professional activities competently - if so, details should be provided,

(iii) **Rules of Conduct, Disciplinary Mechanism and Complaints Procedures**

- is there a disciplinary mechanism and complaints procedure – if so, details should be provided,
- do these mechanisms effectively protect the consumer, and will they ensure that good standards are maintained by those exercising the new rights,
- where appropriate, do the proposed rules of conduct contain procedures controlling the handling of client’s money and provision for compensation.

(iv) **Non-Discrimination Rules**

- do the proposed rules of conduct prohibit unfair discrimination, including in relation to the withdrawal or withholding of services,

(v) **Professional Indemnity Insurance**

- do the proposed rules of conduct provide for an adequate level of professional indemnity insurance for the rights proposed,

(vi) **Transitional Arrangements**

- are interim arrangements needed to provide sufficient time to allow existing practitioners to qualify under any new arrangements

(vii) **Legal Requirements**

- is the application, including the proposed rules of conduct, consistent with any relevant legal requirements, for example, the requirements of Human Rights, Competition, and anti-Discrimination legislation including equality and diversity.

16. **ACCOMPANYING DOCUMENTS**

The application should be accompanied by:

- (i) a statement of the rights proposed,
- (ii) a draft of the proposed qualification regulations and rules of conduct in relation to the proposed rights,
- (iii) background information, including information about the constitution and activities of the body and its members,
- (iv) any rights of audience or rights to conduct litigation which its members currently enjoy and under what legislation these rights are granted, or which the body is currently authorised to grant,
- (v) an explanation as to why the body wishes to be able to grant the proposed rights.

**In preparing the above documents you may find the provisions of ANNEX C useful.**

**THE PROCEDURE**

17. Once you have put all the above information together in your application, and have included the accompanying documents, you should address it to:

Legal Services Development Division,  
Department for Constitutional Affairs  
Selborne House,  
54 - 60 Victoria Street,  
London SW1E 6QW

18. On receipt of your application, a letter of acknowledgement will be sent to you by one of the Secretary of State's officials. The letter will also give an indication of the time frame for considering the application, although this may be subject to adjustment. Please note that the process can be fairly lengthy because there are a number of stages and a number of different people who must consider the application.
19. The Secretary of State will consider your application and may ask you for additional information. You must provide such additional information, as the Secretary of State reasonably requires.
20. The Secretary of State will send a copy of your application, together with the accompanying documents and any additional information you have provided to him, to the Legal Services Consultative Panel (the Consultative Panel), the Office of Fair Trading (OFT) and each of the four designated judges (namely, the Lord Chief Justice of England and Wales, the Master of the Rolls, the President of the Family Division and the Vice-Chancellor).

21. The Consultative Panel and the OFT will consider whether the application should be granted. The OFT will consider whether granting the application would have, or be likely to have, any significant effect on competition. The Consultative Panel and the OFT may ask you for additional information. You must provide such additional information as they reasonably require.
22. The Consultative Panel and the OFT will then give advice to the Secretary of State in relation to the application. Their advice will be published.
23. The Secretary of State will send you a copy of the advice of the Consultative Panel and the OFT. You will be allowed 28 days (beginning with the day on which the copy is sent to you) to make any representations about the advice to the Secretary of State. If you think you will require longer than 28 days for this purpose, you should contact the Department for Constitutional Affairs who may agree to a longer period for making representations.
24. If you have agreed to any suggested changes made by the Consultative Panel and/ or the OFT, these changes must be made to the original application and must be clearly highlighted. The revised application should then be sent to the address overleaf.
25. The Secretary of State will then send to each of the designated judges a copy of the advice of the Consultative Panel and the OFT as well as any representations made by you about the advice.
26. Each of the designated judges will consider whether the application should be granted. The designated judges may ask for additional information. You must provide them with such information as they reasonably require.
27. Each of the designated judges will then give advice to the Secretary of State in relation to the application.
28. After considering the advice given by the Consultative Panel and any representations made by you about it, the advice given by the OFT and any representations made by you about it, and the advice given by each of the designated judges, the Secretary of State will decide whether to grant the application.
29. You will be notified of the Secretary of State's decision as soon as practicable after the decision is made. If the Secretary of State has decided to refuse your application, you will be notified of the reasons for his decision.
30. If your application is granted, the Secretary of State will then recommend to Her Majesty that an Order in Council is made designating the body as an authorised body for the purposes of section 27 or 28 as applicable. The proposed regulations and rules, which accompanied your application, will also be approved as qualification regulations and rules of conduct in relation to the proposed rights.

## Application for approval of alterations of Qualification Regulations or Rules of Conduct.

31. If an authorised body wishes to make any alteration to any of its qualification regulations or rules of conduct which relate to the rights of audience or rights to conduct litigation granted by it, the body should apply in writing to the Secretary of State asking him to approve the alteration.

**Note:** It would be helpful if the applicant would nominate one individual as the main point of contact in connection with the application.

### **THE APPLICATION**

32. The application should set out the nature and effect of the existing regulation or rule, the nature and effect of the proposed alteration, and an explanation of why you wish to make the alteration in question. The application should also address the issue of whether the proposed alteration is consistent with any relevant legal requirements, for example, the requirements of Human Rights, Competition, and anti-Discrimination legislation.

### **ACCOMPANYING DOCUMENTS**

33. The application should be accompanied by a copy of the existing regulation or rule and a statement of the alteration(s) which the body intends to make to that existing regulation or rule. You may find it more convenient to send simply a copy of the existing regulation or rule with the proposed alteration(s) marked up.

### **THE PROCEDURE**

34. You should send your application to:

Legal Services Development Division,  
Department for Constitutional Affairs  
Selborne House,  
54 - 60 Victoria Street,  
London SW1E 6QW

35. On receipt of your application, a letter of acknowledgement will be sent to you by one of the Secretary of State's officials. The letter will also give an indication of the time frame for considering the application, although this may be subject to adjustment. Please note that the process can be fairly lengthy because there are a number of stages and a number of different people who must consider the application.
36. The Secretary of State will consider your application and may ask you for additional information. You must provide the Secretary of State with such information as he reasonably requires.

37. The Secretary of State will send a copy of your application, together with accompanying documents and any additional information you have provided to him, to each of the four designated judges. He will also consider whether it would be appropriate to seek the advice of the Consultative Panel and/or the OFT. If he thinks it appropriate to seek their advice he will send them a copy of your application, together with accompanying documents and any additional information.
38. The designated judges, and, if consulted, the Consultative Panel and the OFT, may ask you for additional information, and you must provide them with such information as they reasonably require.
39. If the Secretary of State considers that it would not be appropriate to seek the advice of the Consultative Panel, he will inform each of the designated judges that that is his view, and he may inform each of them of his provisional view as to whether or not the application should be granted. If so informed, each of the designated judges will consider whether the application should be granted and will give advice to the Secretary of State in relation to the application. After considering the advice given by each of the designated judges, the Secretary of State will consider again whether or not it would be appropriate to seek the advice of the Consultative Panel and/or the OFT before deciding whether to grant the application.
40. If consulted, the Consultative Panel will consider whether the application should be granted, and will give advice to the Secretary of State in relation to the application, which advice will be published. If consulted, the OFT will consider whether granting the application would have, or be likely to have, any significant effect on competition, and will give advice to the Secretary of State in relation to the application, which advice will be published.
41. If the Secretary of State consults the Consultative Panel and/or the OFT, he will send you a copy of their advice. You will be allowed 28 days (beginning with the day on which the copy is sent to you) to make any representations about the advice to the Secretary of State. If you think you will require longer than 28 days for this purpose you should contact the Department for Constitutional Affairs who may agree to a longer period for making representations.
42. If you have agreed to any suggested changes made by the Consultative Panel and/ or the OFT, these changes must be made to the original application and must be clearly highlighted. The revised application should then be sent to the address overleaf.
43. The Secretary of State will then send to each of the designated judges a copy of the advice of the Consultative Panel and the OFT as well as any representations made by you about the advice.
44. Each of the designated judges will consider (or reconsider) whether the application should be granted. Again you must provide them with such information as they reasonably require. Each of the designated judges will then give advice to the Secretary of State in relation to the application.

45. After considering any advice given by the Consultative Panel and any representations made by you about it, any advice given by the OFT and any representations made by you about it, and the advice given by each of the designated judges, the Secretary of State will decide whether to grant the application. The Secretary of State may not refuse the application unless he has received advice from the Consultative Panel.
46. You will be notified of the Secretary of State's decision as soon as practicable after the decision is made. If the Secretary of State has decided to refuse your application, you will be notified of the reasons for his decision.
47. If your application is granted, the alteration is approved, and will have effect.
48. If you have any questions about this process or the preparation of an application, you should contact:
  - Legal Services Development Division,
  - Department for Constitutional Affairs
  - Selborne House,
  - 54 - 60 Victoria Street,
  - London SW1E 6QW
  - Telephone: 020 7120 8816

ANNEX A

SCHEDULE 4 TO THE COURTS AND LEGAL SERVICES ACT 1990  
AS AMENDED BY SCHEDULE 5 TO THE ACCESS TO JUSTICE ACT 1999

PART 1 - AUTHORISED BODIES

1. Application to Secretary of State

(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 Secretary of State 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 Secretary of State with such additional information as he may reasonably require.

- (4) The Secretary of State 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.

## 2. Advice of Consultative Panel

- (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 Secretary of State as it thinks fit.
- (4) The Consultative Panel shall publish any advice given by it under this paragraph.

## 3. Advice of Director General of Fair Trading

- (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 Secretary of State 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.

## 4. Representations by applicant

- (1) When the Secretary of State 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 Secretary of State may agree, to make representations about the advice to the Secretary of State.

## 5. Advice of designated judges

- (1) The Secretary of State 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 Secretary of State as he thinks fit.

#### 6. Decision by Secretary of State

- (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 Secretary of State shall decide whether to grant the application.
- (2) When the Secretary of State has made his decision he shall notify the applicant of it.
- (3) If the Secretary of State has decided to refuse the application he shall also notify the applicant of the reasons for his decision.

#### 7. Effect of grant of application

Where the application is granted-

- (a) the Secretary of State 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.

**SCHEDULE 4 TO THE COURTS AND LEGAL SERVICES ACT 1990**  
**AS AMENDED BY SCHEDULE 5 TO THE ACCESS TO JUSTICE ACT 1999**

**Part 2 - APPROVAL IN CASES OF ALTERED REGULATIONS, RULES OR RIGHTS**

1. **Requirement of approval**

(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 Secretary of State.

(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 Secretary of State.

(3) If a question arises whether approval is required by virtue of this paragraph it shall be for the Secretary of State to decide.

2. **Application to Secretary of State**

(1) An application by a body for the Secretary of State 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 Secretary of State with such additional information as he may reasonably require.

(4) The Secretary of State 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.

### 3. Early advice of designated judges

- (1) If the Secretary of State 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 Secretary of State as he thinks fit.
- (5) After considering the advice given by each of the designated judges, the Secretary of State 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.

### 4. Advice of Consultative Panel

- (1) If the Secretary of State 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 Secretary of State as it thinks fit.
- (5) The Consultative Panel shall publish any advice given by it under this paragraph.

5. Advice of Director General of Fair Trading

- (1) If the Secretary of State 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).
- (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 Secretary of State 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.

6. Representations by applicant

- (1) If the Secretary of State 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 Secretary of State may agree, to make representations about the advice to the Secretary of State.

7. Advice or further advice of designated judges

- (1) If the Secretary of State 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 Secretary of State as he thinks fit.

#### 8. Decision by Secretary of State

- (1) After considering-
  - (a) any advice given by the Consultative Panel and any representations made about it;
  - (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 Secretary of State shall decide whether to grant the application.

- (2) The Secretary of State may not refuse the application unless he has received advice from the Consultative Panel.
- (3) When the Secretary of State has made his decision he shall notify the applicant of it.
- (4) If the Secretary of State has decided to refuse the application he shall also notify the applicant of the reasons for his decision.

#### 9. Effect of grant of application

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.

PRINCIPLES OF BETTER REGULATION

The Better Regulation Task Force is an independent group drawn from a variety of backgrounds including business, citizen and consumer organisations and the voluntary sector, having experience of regulatory issues. It was established in 1997 to advise the government on improving the quality of its regulation. Early on in its work the Task Force established the characteristics of good regulation as: necessary, fair, balanced and commanding public support. It went on to identify five principles of good regulation, against which the appropriateness and effectiveness of any type of regulation should be tested. These are:

- Transparency
- Accountability
- Targeting
- Consistency
- Proportionality

Set out below is a synthesis of the explanations of the principles by the Task Force, as applied to regulation in general and self-regulation in particular:

*Transparency*

- Policy objectives, including the need for regulation, should be clearly defined and effectively communicated to all concerned.
- Rules should be simple and clear, with guidance notes for those applying them. Details regarding application of rules should be easily accessible.
- Those being regulated must be made aware of their obligations, must understand them and know what to expect from enforcing authorities.
- There must be clear and accessible internal channels of communication.
- There must be a well-publicised complaints procedure.
- There must be clear and easily accessible guidance for consumers about what the regulatory scheme does and does not cover.
- Annual reports or equivalent must be published, with details of financial performance and complaints-handling including numbers and outcomes.
- There must be an independent dispute resolution procedure
- There must be a clear delineation of roles within the organisational structure, e.g. a separate disciplinary committee.
- Proposals must be published and adequate time given for consultation before decisions are taken.

*Accountability*

Regulators must be accountable to government, citizens and Parliament. Public accountability is achieved in the following ways.

- There must be a quick and simple procedure for dealing with complaints.
- There must be a fair and efficient appeals procedure for both consumers and professionals.

- Consumers must have access to an ombudsman or independent arbitration.
- The processes for appointing and removing the governing body must be clear and open.
- There must be lay representation on decision-making bodies, sufficient to strike the balance between the need for expertise and the possibility of professional complacency.
- There should be a clear division between the regulatory role and any function of representing the profession.
- There must be appropriate, clearly defined and properly used channels to consult members of the profession.
- There should be mechanisms for reporting on activities to the wider public.

### *Targeting*

- The approach taken must be aimed at the problem (it must not be “scatter-gun” or universal).
- The approach must be goals-based where possible, with goals clearly defined.
- Flexibility must be built into the approach, enabling regulation to be adjusted to suit future change of circumstances. Both regulators and the regulated must be left some freedom to decide how best to achieve goals or targets.
- There must be extensive internal and external consultation on rules and codes of practice.
- Performance indicators should be in place to measure effectiveness.
- Regulations should be reviewed from time to time to test whether they are still necessary and effective. If not they should be modified or removed.

### *Consistency*

- New regulations should be consistent with existing ones.
- Regulations must be compatible with EU and international trade and competition policy.
- There must be even enforcement by authorities across the country.

### *Proportionality*

- Alternatives to regulation should be fully considered.
- The impact on all those affected should be identified, establishing the right balance between risk and cost. Regulation should not place unnecessary demands on those being regulated.
- Enforcement action must be proportionate to the seriousness of the offence. The mechanisms in place should impose meaningful sanctions on those who break the rules but not disadvantage those who want to comply. Similarly procedures must ensure that good practice is not threatened by risk of disproportionate sanctions for relatively minor offences. Focusing more on redress for consumers as opposed to discipline where appropriate may help to achieve this.

