

# Revisions to Statement on Members Engaging in Public Practice



 READING TIME: 10 mins  ACTION: To note

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## FRAMING

### Context

A revised ICAEW statement on members engaging in public practice came into effect on 1 January 2024 after being approved by ICAEW Council in 2023. The statement clarifies what is meant by engaging in public practice for the purposes of holding a practising certificate. The IRB was asked to provide comment on the amendments given the role played by PSD in checking whether practising certificates are held by those who should hold them and taking disciplinary action.

Concerns were raised by the Council member for the Channel Islands that the statement is discriminatory to members working in the Channel Islands. A paper is to be presented at the October Council meeting exploring solutions to resolve the position. In the meantime, the amnesty period for members working in the Channel Islands has been extended until the October meeting.

### Purpose - for information

This paper provides a briefing on changes that are proposed to the ICAEW Statement on Members Engaging in Public Practice.

This paper is currently confidential as it relates to policy under development that is yet to be approved by ICAEW Council. Should ICAEW Council approve the policy change, then the paper could be published after that time.

### Questions to the reader

Does the board have any concerns with the proposed changes to the Statement?

Does the board have any feedback that should be considered before taking this proposal to Council for approval?

## EXECUTIVE SUMMARY

### 1. Why do we need to create or review this policy?

Concerns were raised by the Council member for the Channel Islands that the statement is discriminatory to members working in the Channel Islands.

### 2. What are the key issues to consider?

Key issues include whether the current policy is discriminatory, whether further clarifications are

required in the Statement and whether there is duplication of regulation.

### 3. What changes are needed to the Statement to address these issues?

It is suggested that Council approve an amendment to paragraph 19 of the Statement which is set out below in section 3.

## THE PAPER

### 1. Why do we need to create or review this policy?

A revised ICAEW statement on members engaging in public practice ('statement') was published in May 2023 and came into effect on 1 January 2024. The statement clarifies what is meant by engaging in public practice for the purposes of holding a practising certificate ('PC'). Broadly, a member who is a principal in a public practitioner is required to hold a PC.

One of the changes in the January 2024 statement was the removal of a provision that, if a firm's turnover from accountancy services was less than 10%, then the firm was not considered to be a public practitioner. The result of the removal of this 10% de minimis threshold is that some members who did not previously hold a PC have had to obtain one.

The 2024 statement does, however, provide a carve out for principals in a firm that provides accountancy services that are incidental to core business services, and those core business services are not accountancy or related services. The concept of incidental services is discussed in more detail later in this paper. This means that depending on the way in which a firm provides accountancy services, and how significant this provision is to the business, it may still be the case that some members who are principals in firms providing both accountancy services and another type of services may not need a PC.

A failure to hold a PC when required to do so is a potential disciplinary matter. However, in recognition of the changes to the statement, an amnesty period was held from 1 January 2024 to 30 April 2024 so that any member who rectified the non-compliance in that period would not be referred to the Conduct Department for the breach.

During the amnesty period, concerns were raised by the Council member for the Channel Islands that the statement is discriminatory to members working in the Channel Islands, in particular those who are principals in firms that are regulated by the Jersey Financial Services Commission. This is because paragraph 19 of the 2024 statement makes reference to an exemption if the firm is regulated by mainland UK financial service regulators but not equivalent bodies in the Channel Islands:

*Para 19. You do not require a PC if you are a principal in an entity that is authorised by the Financial Conduct Authority (FCA) or Prudential Regulation Authority (PRA).*

A number of Channel Islands Trust and Company Businesses ('TCBs') were previously relying on the 10% de minimis threshold for accountancy services and therefore principals in those firms who are ICAEW members have not previously held a PC. It may be that some of these TCBs would qualify for the exemption provided for incidental accountancy services.

The risk of a discriminatory position for members in the Channel Islands was raised at the June 2024 Council meeting. It was agreed that a paper would be brought to Council at the October 2024 meeting exploring solutions to resolve the position. In the meantime, the amnesty period for members working in the Channel Islands has been extended until the October meeting, pending conclusion of the matter.

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## 2. What are the key issues to consider?

### 2.1. Are Channel Islands members treated differently?

It is acknowledged that paragraph 19 of the statement as drafted could result in members in the Channel Islands being treated differently to members working on the UK mainland. This could be addressed by expanding the list of financial services regulators referenced in paragraph 19 to include the equivalent financial services regulators in the Channel Islands. For consistency, the Isle of Man financial services regulator would also need to be referenced. However, there is a wider point about the policy intent of paragraph 19 and how it is intended to apply to firms providing both financial services and accountancy services. This is detailed below.

### 2.2. Is greater clarity needed on the intent of paragraph 19?

The policy intent of paragraph 19 is that where a firm is regulated by the FCA or PRA **and** the firm does not also provide accountancy services (other than incidentally), then the ICAEW members who are principals in that firm do not require a PC. However, a strict reading of paragraph 19 in isolation would suggest that a FCA or PRA regulation is itself sufficient to exempt the principals from holding a PC, even if the firm provides a substantive amount of accountancy services.

If this narrow interpretation of paragraph 19 was applied, it would result in principals in some of the largest ICAEW member firms no longer requiring a PC given that those firms also provide financial services to clients that are regulated by the FCA. However, it would clearly not be a desirable or consistent position for principals in those firms who provide accounting services which are not overseen by the FCA to be outside of the requirement to hold practising certificates and to fall outside of the Practice Assurance Scheme.

Since this issue was raised, we have analysed data reports based on information disclosed by firms on their Annual Returns to identify the population of firms with FCA authorisation. These reports show that there are 133 firms with an FCA authorisation and, of those, 101 of the firms also provide accountancy services. A further analysis of the principals within those firms shows that the 101 firms all have principals who hold PCs. This demonstrates that based on the information we have available, firms are interpreting paragraph 19 in the way that it is intended. We believe, however, that amendments should be made to make more explicit clarification of the intent of the paragraph.

It should be noted however, that there may be firms that ICAEW is unaware of, that are FCA or PRA regulated and are relying on a narrow interpretation of paragraph 19 as the basis for their principals not holding a PC. This would mean that the accountancy services provided in those firms are not subject to oversight and supervision by ICAEW as explained below. The exemption for financial services regulated firms was worded differently in the previous version of the statement however and also required that the firm had not been designated an 'authorised professional firm'. This may mean that only a small number of firms would have made use of the exemption as defined in the previous version of the statement.

### 2.3. Is there risk of duplication of regulation?

A concern has been raised that there could be duplication of regulation as a consequence of requiring PCs to be held by principals in firms who are also authorised and overseen by a financial services regulator.

However, in mainland UK, where a firm provides both financial services and accountancy services, the financial services regulator such as the FCA will only regulate the financial services provided by the firm, not the accountancy services. Not having ICAEW as a regulator for the firm would result in gaps in regulatory oversight, and in particular would mean that the firm would not have an Anti-Money Laundering supervisor for their accountancy services. The firm would therefore be in breach of the money laundering regulations.

From a practical perspective, an ICAEW practice assurance visit would scope out from the review any financial services related activity on the basis that this is for the relevant financial services regulator to consider. Therefore, for the principals in a firm that provides both financial and accountancy services to hold a PC as well as be regulated by an FS regulator, should not result in any duplication of regulation.

The position is slightly different in Jersey (and Guernsey) in that the JFSC (and GFSC) is responsible for anti-money laundering supervision for the firm - ICAEW is not an AML supervisor in either jurisdiction. ICAEW PC holders and member firms are required to comply with the Practice Assurance Regulations but the scope of any Practice Assurance monitoring by ICAEW would be limited to compliance with those elements of the Practice Assurance Regulations that are not already dealt with by the JSFC/GFSC such as compliance with the ICAEW Clients' Money Regulations, Code of Ethics and CPD. As a result, it is anticipated that PSD's monitoring activities will be limited and the compliance burden on firms and members in the Channel Islands will not be onerous.

If ICAEW were not a regulator for these Jersey and Guernsey firms, in addition to the JFSC and GFSC, there would be no mechanism for clients to complain about poor service or other wrongdoing related to the accountancy services provided. This is because the non-financial services element of the firm would not be subject to any regulatory or disciplinary regulation or procedures under the practice assurance regulations. Further details of PSD's approach to monitoring in the Channel Islands is attached as appendix 1.

## 2.4. Incidental accountancy services

Paragraph 20 of the statement explains that a member does not require a PC if they are a principal in a firm that provides accountancy services that are incidental to core business services, and those core business services are unrelated to accountancy. Further guidance is provided for members on how to evaluate whether the provision of accountancy services would be considered incidental to core business. This can depend on the way in which the services arise and are billed for (if they are arising out of the core business and not separately billed then they may be incidental). The position also depends on how the firm markets itself and its services, and the overall volume and incidence of accountancy services.

The evaluation of whether a firm is providing accountancy services in only an incidental manner has to be done in a balanced way to take into account all the qualitative aspects of how accountancy services are provided. This means that the analysis has to take place on the facts of each firm's approach on a case by case basis. It would appear that this remains the appropriate way to deal with whether in substance, a firm is providing accountancy services to such an extent that the firm should be in scope of ICAEW practice assurance.

## 2.5. Are any other types of firm affected?

Concerns have also been raised that members working in other types of organisations may be required to hold a PC, for example, pension funds, real estate trusts, and private equity funds. However, paragraph 16 of the Statement defines a public practitioner as "*an entity (including an individual in sole practice) providing accountancy or reserved services for a fee.*"

So this means that the entity must be providing professional services that meet the definition of accountancy and reserved services to clients in exchange for a fee. Our view is that it is unlikely that these organisations would meet the definition of a public practitioner and therefore the ICAEW principals in those organisations would not be required to hold a PC.

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## 3. What changes are needed to the Statement to address these issues?

### 3.1. Revised text for paragraph 19

The conclusion of the analysis above is that the following change should be made to the Statement - new text is shown in red.

*Para 19. You do not require a PC if you are a principal in an entity that is authorised by the Financial Conduct Authority (FCA), or Prudential Regulation Authority (PRA), or other competent financial services regulator (as defined) and the entity does not provide accountancy services other than incidentally, as defined in paragraph 20 below. A competent financial services regulator includes the Jersey Financial Services Commission, Guernsey Financial Services Commission, and the Isle of Man Financial Services Authority.*

We have also concluded that the description of incidental accountancy services in paragraph 20 should have a link added to refer to the guidance that exists on how to evaluate whether accountancy services are provided in an incidental way.

### 3.2. Revised text for annex 1 to the Statement?

A consequential amendment would also be required to the list of services within annex 1 that would not be considered accountancy services

*1. Investment business and other activities conducted under authorisation from the FCA or the PRA, or other competent financial services regulator (as defined).*

### 3.3. Consultation and next steps

We have worked with the Financial Services Faculty on exploring the issues related to the statement, and the Faculty are in support of the changes proposed. Given the role played by PSD in monitoring and enforcement in relation to practising certificates, Council will want to see confirmation of support for this change from the IRB in the paper it receives on this matter.

Should Council approve the proposed revisions to the statement, a communications plan would be developed both through PSD regulatory communications channels, and through the Personal Financial Planning community, Corporate Finance Faculty and Financial Services Faculty.

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## ICAEW's approach to monitoring in the Channel Islands

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## ICAEW Statement on Members Engaging in Public Practice - dated 1 January 2024

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