



CILEX CONSULTATION ON PROPOSAL TO BECOME THE PROBATE REGULATOR FOR ACCA

Issued 7 October 2020

ICAEW welcomes the opportunity to respond to CILEx Regulation's consultation proposal to become the regulator of Association of Chartered Certified Accountants (ACCA) firms for the reserved activity of probate issued 12 August 2020 a copy of which is available from this [link](#).

ICAEW is a world-leading professional body established under a Royal Charter to serve the public interest. In pursuit of its vision of a world of strong economies, ICAEW works with governments, regulators and businesses and it leads, connects, supports and regulates more than 154,000 chartered accountant members in over 160 countries..

This response dated 7 October 2020 reflects the views of ICAEW as an Approved Regulator for the reserved legal service of probate. ICAEW Professional Standards is the regulatory arm of ICAEW. Over the past 25 years, ICAEW has undertaken responsibilities as a regulator under statute in the areas of audit, insolvency, investment business and most recently Legal Services. In discharging its regulatory duties it is subject to oversight by the FRC's Conduct Committee, the Irish Auditing and Accounting Supervisory Authority (IAASA), the Insolvency Service, the FCA, the Legal Services Board.(LSB) and the Office for Professional Body Anti-Money Laundering (OPBAS).

Amongst ICAEW's regulatory responsibilities it is;

- the largest Recognised Supervisory Body (RSB) and Recognised Qualifying Body (RQB) for statutory audit in the UK, registering approximately 2,600 firms and 7,000 responsible individuals under the Companies Act 2006.
- a Prescribed Accountancy Body (PAB) and Recognised Accountancy Body (RAB) for statutory audit in Ireland, registering approximately 40 firms and 250 responsible individuals under the Republic of Ireland's Companies Act 2014.
- the largest recognised supervisory body (RSB) for local audit in England. It has eight firms and over 90 key audit partners registered under the Local Audit and Accountability Act 2014;
- the largest single insolvency regulator in the UK licensing some 800 of the UK's 1,600 insolvency practitioners as a Recognised Professional Body (RPB) under the Insolvency Act 1986;
- a Designated Professional Body (DPB) under the Financial Services and Markets Act 2000 currently licensing approximately 2,000 firms to undertake exempt regulated activities under that Act.
- a Supervisory Body recognised by HM Treasury for the purposes of the Money Laundering Regulations 2007 dealing with approximately 11,000 member firms.
- designated an Approved Regulator and Licensing Authority for probate under the Legal Services Act 2007 (the Act) currently accrediting approximately 300 firms to undertake this reserved legal activity.

INTRODUCTION

General approach

1. ICAEW welcomes the opportunity to contribute to comments on the proposals put forward by CILEx to absorb the probate regulatory activities of ACCA.
2. We note with concern that the changes made to the LSB's Internal Governance Rules (IGRs) has forced a new regulator to withdraw from a market that is supposed to have opened up and become more competitive as a consequence of the Legal Services Act 2007 (the act). Legal Services sit comfortably alongside accountancy services and there are many common features across the two service provisions that provide a ripe opportunity to provide a wider choice to the consumer. In our representations on the IGRs we expressed concern on the balance applied between independence and the eight statutory objectives and though ICAEW has been able to comply it is fundamentally wrong that ACCA are no longer to offer access to blended accountancy and legal services that their presence would have continued to give.
3. Given ACCA's need to withdraw it is clear that steps need to be in place to enable the practices approved by them for probate services to move to a new regulator with the minimum of disruption to them and their consumers. CILEx's stepping up to assist in this area is therefore a welcome development and brings with it some interesting and bold innovation. But any wholesale move of all ACCA probate oversight should be part of temporary transition arrangements only.
4. However the six months window afforded by the LSB (through its exercise of the savings provisions of rule 16) to effect a transition is an extremely short time frame in which to accommodate a new structure and set of working practices in a complex area. There are a number of concerns we have arising out of the proposals that we believe, given a longer time frame, would have been more carefully thought through and better safeguards for the consumer applied.
5. In particular we believe the introduction of a two tier level of practice and the separation of the act of probate and estate administration for practitioners for what is effectively the same service between two entities causes a number of concerns. The SRA took a number of years to understand ICAEW's structure and controls and drew on them in developing an approach allowing authorisation at the same level as solicitor practices for accountancy firms. This has dealt with cross-regulator conflict which has been put forward as one of the reasons here for the dual firm approach.
6. A further element of concern is the apparent attempt to direct the ACCA practitioners solely to CILEx without option. We believe this is inconsistent with the competition objective of the act and that those practices should have options to go elsewhere, recognising that ACCA could still recommend this as the preferred choice. The proposals however currently do not allow that flexibility.
7. We do welcome the recognition of the ACCA qualification though we do note that this is not accepted for future licensing even though this would still be acceptable to ICAEW. This may be linked to the apparent CILEx exclusivity as clearly their qualifications would apply in such circumstances. Transitional arrangements for those ACCA members who have sat their exam but not yet applied to be registered do not appear to be covered and may be disadvantaged by this process.
8. Overall the proposals appear rushed and unbalanced. In our view they work only as transitional arrangements and even then we only see them as a series of interim measures over say a period of a year or two whilst a more cohesive approach is developed, but as they stand they appear disadvantageous to the consumer, the firms and the reputation of accountants providing legal service to the general public.

RESPONSES TO SPECIFIC QUESTIONS**Question 1: Do you agree that CILEx should become the regulator of Association of Chartered Certified Accountants (ACCA) Accredited firms for the grant of probate?**

9. No. Whilst we would fully endorse the proposal that CILEx should be able to regulate ACCA firms, and even perhaps be ACCA's recommended regulator of choice, the access into accreditation for current ACCA authorised firms should not be limited to only one of the 8 remaining regulators. The other firms currently authorised by ACCA should be able to exercise choice in how they deal with their registrations.
10. A key element of the act is opening up access to the supply of legal services to facilitate a competitive market which enabled the regulators to regulate firms which may be regulated for other purposes with other bodies, and indeed have practitioners authorised for legal services who were members of other bodies. It was an approach readily understood by ICAEW as this has been applied in the reserved activity of audit since 1989 and has been continued under the Companies Act 2006.
11. Whilst reference is made in the document to conversations with the LSB it is not clear if this specific element of the proposal has been tested with them. We observe this on the basis that the LSB were rigorous in requiring ICAEW as part of its own authorisation in 2014 to open up routes to accreditation from not only traditionally qualified sources but also those who could demonstrate the necessary competences. That freedom of choice has then been mirrored by ICAEW not inhibiting its own member firms and members from applying for legal service registration with other bodies such as the SRA and indeed CILEx.
12. As of 1 September 2020 over 10 ICAEW accountancy firms were understood to be registered with the SRA. A number of ACCA members are principals in firms currently licensed by ICAEW for probate, and it is worth noting just under 1,000 members of ACCA were registered with ICAEW for the conduct of audit even though ACCA itself is an audit regulator. These figures indicate the greater fluidity in the market brought about by the act and therefore this proposal in our view compromises this by the apparent move to introduce exclusivity to CILEx. It is an unsatisfactory precedent which we do not believe should be set.

Question 2: What, if any, do you consider are the benefits and issues of providing this route to ACCA firms?

13. Approaching this question on the basis it relates to an optional route, we endorse the aims of both CILEx and ACCA in ensuring the ability of those accredited ACCA probate firms to move seamlessly from one regulator to another without interruption in the supply of service by those firms to the consumer at 1 January 2021. However they could equally with notice move to another regulator to achieve this transition.
14. We do have to commend the important step forward being taken in these proposals to recognise the qualifications and accreditations of another body that is not the Law Society or the Bar. This sadly is not the case with many of the other legal service regulators and therefore those that have moved from ICAEW to other bodies have found where they are not qualified solicitors, barristers or legal executives their accreditation is withdrawn. This is in contrast to the audit industry where cross-recognition of qualification is a requirement under the Companies Act.
15. CILEx's acceptance of the ACCA bespoke probate training and examination is therefore a welcome step.

Question 3: CILEx Regulation is proposing to regulate the specific reservation of probate through a separate business entity rather than within the ACCA regulated accountancy firm? What might be the benefits and issues of this approach?

16. We are extremely uncomfortable with this approach as we believe it would be highly confusing to the consumer and does not mirror the statutory benefits. The line between estate administration and probate is a fine one at the best of times, and ICAEW (though offered the option by the LSB) chose to regulate both activities in any firm registered for probate so there would be no issues around accountability for money handling and cross-over in activity. This ensures the Professional Indemnity Insurance covers any disaster. This rolls over into compensation fund arrangements where we note the proposals are ambivalent.
17. A simple example is the calculation of tax for the IHT400 as part of the probate service. It is likely this would be devolved by the practitioners in the Probate practice to the tax specialists in the accountancy practice; if there turns out to be a fundamental mistake in the calculation of the tax, the line of remedies for the consumer would be unclear as would be the compensation arrangements.
18. One of the cornerstones of the act is the introduction of the Alternative Business Structures. These allowed multi-disciplinary services to be offered including the reserved ones by a single entity as a single bundle of supply. This arrangement appears to be counter-intuitive to that and weakens consumer protection.

Question 4: It is proposed that ACCA will continue to regulate all the unreserved elements of estate administration. What are the benefits and issues of this approach?

19. At the heart of the approach is the incongruous nature of the reserved activities where estate administration is not a regulated activity. ICAEW has over 2,700 firm carrying out estate administration and 300 of these are regulated through the probate licensing and 1900 are not. On the face of it this is a little confusing but the regulation is mirrored under the act by the professional privilege which covers both probate and estate administration under section 190 of the act, and both the practitioners and the consumer understand where the rights and obligations lie. So having operated for six years with this duality ICAEW see no reason why that should not apply in ACCA firms without the need for a separate entity or separation of the estate administration activity.
20. The comments around consumer protection, insurance cover and compensation fund arrangements noted in paragraph 16 above also apply in response to this question.

Question 5: Please review the rules being adopted within the new CILEx / ACCA Handbook, do these provide suitable protection? Are there any gaps?

21. We have noted some of the gaps which we believe apply here in earlier answers. However, from a different perspective, the innovation in applying different methods of recognition seems to have been cut off in its prime. The opening up of the market this way is a great example of proportionality, and yet by restricting applicants to members of ACCA, an opportunity seems to be missed to facilitate wider regulation of practitioners outside the traditional legal coterie, which is one of the ambitions of the act.
22. The separate designations "CILEx Authorised Firm" and "CILEx ACCA Firm" effectively give the impression of two different levels of quality. As CILEx already award practice rights by specialism we do not see why the ACCA authorisation should be any different to the regulation and accreditation of a CILEx Authorised Firm limited to probate. At worst it appears as a crude quality indicator. It is recognised that OPBAS inspections and Client Money Regulations may cause complications but these are faced by other regulators and managed effectively, drawing particularly on the equivalence of standards across each regulator.

23. The two tier approach also reflects badly on the accreditation process used for accountants as a whole and affects the standing of ICAEW's own qualification criteria. It also dilutes the quality of those accountants regulated by the SRA and other bodies. This provides confusion for the consumer and at worst drives the conclusion that only lawyers are good enough to do this work properly. The standards set by schedules 4 and 11 of the act governing the eligibility of practitioners are intended to be of a singular level, not a separate class system. We would therefore prefer that CILEx integrate rather than separate the approval and accreditation process.

Question 6: Do you agree that this approach still offers the consumer appropriate protection? If not, please provide reasons with your response.

24. The separation of the probate act and the estate administration processes, which are to the consumer being delivered by the same organisation, means that the remedies as well as the points of contact are unclear. We have noted above the example of an error in IHT submissions and how it could straddle the two entities involved. In addition the PII cover for the two entities would need to be carefully drafted to ensure that there was no gap in supply or risk of both entities insurers stating that any claimable fault lay with the other insurer. Finally the compensation fund arrangements are not clearly defined as to how they would approach the cut off in practice.

Question 7: Do you agree with the proposed fee structure? If not, please provide reasons for your response.

25. It is unclear if the practising certificate fee is that of ACCA's or an additional requirement by CILEx to have a CILEx version of a practising certificate.
26. Under certain interpretations of section 51 of the act the fee structure is also supposed to be matched by the costs and services of CILEx in administering this regulated group. This aspect and compliance with section 51 of the act is not specifically addressed, though the importance of this may depend on the LSB's approach to the proposals. However in our view CILEx should have the flexibility to manage the costs and investment as they think fit without needing to balance the books specifically in this area.