



Legal Services Board – Decision Notice issued under Part 2 of Schedule 4 and Part 1 of Schedule 10 to the Legal Services Act 2007

1. The Legal Services Board (**LSB**) has decided to grant an application to make a recommendation to the Lord Chancellor that the Institute of Chartered Accountants in England and Wales (**ICAEW**) be designating as an approved regulator for the reserved legal activities listed in paragraph 10 of this notice. It has also granted a second application for a recommendation that the ICAEW be designated as a licensing authority for the same reserved legal activities.
2. In making the recommendations, the LSB also recommends that the related regulatory arrangements are at the same time treated as having been approved by the LSB. This includes the ICAEW's Legal Services Regulations which contain the Licensing Rules (see **Annex 3**).
3. This Notice sets out the basis for the LSB decision.

Authority for the decision

4. The authority under which the LSB has made this decision is set out in **Annex 1**.

Background

5. The ICAEW is a chartered body and regulator with responsibilities under statute in the areas of audit, which is within the remit of the Financial Reporting Council (**FRC**), and insolvency, which is overseen by the Insolvency Service (IS). The ICAEW's responsibilities also extend to investment business; in January 2012, the ICAEW became an accredited body under the Financial Services Authority (now the Financial Conduct Authority) Retail Distribution Review (having previously been a designated professional body).

6. In August 2014 the ICAEW was formally granted designation by an approved regulator and licensing authority for probate activities and started accrediting¹ firms for probate activities in September 2014.
7. The ICAEW submitted two applications to the LSB on 20 July 2016 to become an approved regulator and licensing authority for further reserved legal activities (RLA). Schedule 4, 15(2) and Schedule 10, 13(2) of the Legal Service Act (**the Act**) requires that the LSB must give a decision on an application within 12 months beginning with the day the application is made to the Board.
8. The first application was made under Part 2 of Schedule 4 to the Act for designation as an approved regulator, and the second application is for designation as a licensing authority, under Part 1 of Schedule 10 to the Act.
9. The designation as a licensing authority can only proceed if the Lord Chancellor first agrees to designate the ICAEW as an approved regulator².
10. The reserved legal activities the ICAEW wishes to authorise as an approved regulator and licensing authority are:
 - Conduct of litigation
 - Rights of audience
 - Reserved instrument activities
 - Notarial services
 - Administration of oaths.
11. In relation to the first three activities, the ICAEW will restrict the scope of regulation to taxation services.
12. In accordance with the principles of better regulation, and for the purposes of consistency, the ICAEW has developed, where possible, a single regulatory framework that will apply for the most part equally to authorised firms and licensed firms (Alternative Business Structures - ABS) wishing to undertake reserved legal activities. In the limited circumstances where additional requirements apply only in respect of licensed firms (for example, fitness to own tests, ownership, appointment of a Head of Legal Practice and Head of Finance and Administration) this is to comply with requirements of the Act.

¹ Accredited is the term used by the ICAEW to describe authorised and licensed bodies collectively

² Paragraph 1(3)(b) of Schedule 10 to the Act

Assessment of the applications

13. The LSB undertook an assessment of the application for designation as an approved regulator against the criteria for designation specified in Schedule 4 to the Act and, of the application for designation as a licensing authority against the criteria for designation specified in Schedule 10 to the Act. The applications were also assessed against the Rules for Applications for Approved Regulator and Qualifying Regulator designation (1 April 2011) and Rules for applications to be designated as a licensing authority (13 June 2011) (**LSB's Designation Rules**) made by the LSB under each Schedule.³ The assessments are summarised at **Annex 2**.

The Board discussion

Governance and independence

14. The Board discussed the ICAEW's arrangements to secure compliance with the LSB's Internal Governance Rules (**IGRs**).⁴ This is an important consideration. The criteria on independence for both the approved regulator and licensing authority applications is that the applicant must have appropriate internal governance arrangements at point of designation; regulatory functions must not be prejudiced by its representative functions; and, as far as reasonably practical, regulatory decisions are to be taken independently of representative ones.⁵

15. The LSB has concluded that the ICAEW is not an applicable approved regulator⁶ (**AAR**) and therefore do not have to comply fully with the LSB's Internal Governance Rules (**IGRs**). Consequently, the full IGRs schedule (which includes the requirement for a lay majority on the governing body of the regulatory function) does not apply to the ICAEW.

16. The Board is satisfied that the arrangements for the proposed Legal Services Committee (**LSC**) will allow it to exercise the regulatory functions in a way that is

³ The rules made by the LSB are published on the LSB's website at this link: http://www.legalservicesboard.org.uk/what_we_do/regulation/index.htm

⁴ For further information, please refer to the LSB's IGRs which are published on the LSB's website at this link: http://www.legalservicesboard.org.uk/Projects/pdf/internal_governance_rules%202009_final_km.pdf

⁵ As set out in paragraphs 13(2)(a) and 13(3)(a)-(b) of Schedule 4 to the Act respectively, for approved regulator and reserved legal activity applications.

⁶ An "applicable approved regulator" as defined in the LSB Internal Governance Rules is an Approved Regulator that is responsible for the discharge of regulatory and representative functions in relation to legal activities in respect of persons whose primary reason to be regulated by that Approved Regulator is those person's qualifications to practise a reserved legal activity that is regulated by that Approved Regulator

not prejudiced by the ICAEW representative functions. The LSC will be a new Committee rather than the existing Probate Committee with expanded terms of reference and membership. It will consist of no fewer than 12 members, split equally between lay and non-lay members, with a lay Chair who will have a casting vote. The LSC will approve all regulations that apply to legal services and has a role in the development of legal services regulatory policy. As we have concluded that the ICAEW continues to be outside the definition of an AAR, we have judged that these arrangements are appropriate.

17. In making its decision the Board considered not only the nature of the governance arrangements but how they have been delivered. In particular, we noted that the current Probate Committee's low profile might contribute to the perception that probate regulation was not wholly independent from the ICAEW. If these designations are granted and more legal services are delivered through ICAEW, its regulation of those activities should be subject to enhanced scrutiny and in particular there needs to be greater transparency about the nature of the governance arrangements.
18. The ICAEW recognises that while legal services regulation will still be a small part of its activities, its position as a legal services regulator may change (it is already the second largest licensing authority). The ICAEW also recognises and agrees that the new LSC will need to have a higher profile than the Probate Committee. The selection criteria for the Chair will include the ability to engage at an executive level with external stakeholders. The members of the new committee will bring much broader legal services expertise and experience. Indeed, the selection criteria will specifically include the ability to contribute to the development of legal services regulation. The recruitment of the new Chair will be through a process which meets the requirements of the LSB's IGRs.
19. We acknowledge that there is scope for the LSC to adopt a much more robust and proactive role going forward. We are encouraged by ICAEW's commitment to enhance the role of the LSC. In addition, the LSB will maintain closer oversight of how independence operates in practice at the ICAEW, through half-yearly meetings with the Chair of the LSC.

Scope of taxation and regulatory arrangements

20. For the conduct of litigation, rights of audience and reserved instrument activities, the ICAEW will be restricting its scope of regulation to taxation services only, and the definition was contained in both the application and proposed Legal Services Regulations. There is nothing in the definition itself that causes the Board concern and no fundamental gaps or difficulties in the way the ICAEW have described tax activities were identified. We also take some assurance from ICAEW that it instructed Counsel to define in the regulations each of the further reserved legal activities that are restricted to taxation services only.
21. The Board did have a more general concern about how practitioners and consumers would know what was in scope and that there may be a risk of firms straying beyond tax matters. ICAEW has experience from its wider activities of policing the regulatory boundary and has an extensive understanding of the tax sector. Indeed, ICAEW consider the tax area is potentially clearer than probate to regulate, as it is rooted in tax legislation. ICAEW recognise the need to be clear as to where the boundary of tax activity lies, as this will be essential in determining whether a breach has occurred and whether it needs to take disciplinary action. ICAEW reviewers who undertake inspections (see section on Quality Assurance below) are trained to detect where firms are providing services beyond the scope of their accreditation (for all ICAEW activities) and will be provided with specific training in relation to taxation and legal activities.
22. Inevitably this is a fit for purpose assessment and the robustness of the definition and the policing of the boundaries will only be tested if ICAEW accredited firms are permitted to offer these services. We are satisfied that the ICAEW has appropriate arrangements in place to exercise effective oversight of this.

Regulation of notaries

23. The ICAEW said in its application that it understood that the Master of the Faculties was of the opinion that it would not be possible for another regulator to regulate notarial activities.
24. Notarial activities is defined in Schedule 2, paragraph 7 of the Act. We therefore asked the Faculty Office to clarify its position. The Faculty Office confirmed that, in terms of the substantive legal issue it was not arguing that there is a legal bar on any other organisation being designated as an approved regulator of notarial activities. Rather, it cites the statutory provision limiting recognition as a 'public notary' to those individuals who have been enrolled by the Master. The Faculty Office accepts that the Act explicitly removed the statutory provision limiting to

those enrolled individuals the power to perform any ‘notarial act’. As a matter of law, therefore, the ICAEW is clearly entitled to seek designation to authorise and regulate notarial services.

25. The following public interest arguments were raised by the Master of the Faculties and, in separate submissions, by the representative Notaries Society and The Society of Scrivenor Notaries (these submissions were also sent to the Lord Chief Justice by the two societies):

i) *The exercise of independent judgement on the part of the person providing notarial services.*

The Board noted these public interest concerns and the perceived risk that independent judgement could be compromised. Since all notaries working in ICAEW accredited entities will have individual authorisation from the Master of the Faculties, we consider that this is a low risk and there are adequate safeguards in place to ensure, as far as reasonably possible, that the independent judgements of notaries working in ICAEW authorised firms would not be compromised.

ii) *Whether as a result of the proposals the respect and prestige enjoyed by English and Welsh notaries abroad would be diminished.*

Similarly, the Board noted the comment about “prestige and respect”. Again, since all notaries carrying out notarial activities will be authorised by the Master of the Faculties, we consider there to be a very low risk that a notary working within an ICAEW accredited firm will cause an adverse impact on the quality and credibility of the service.

iii) *Impact on regulatory objectives: the Faculty Office contend that there is no evidence of demand for notarial services from accountancy firms and therefore no evidence that in allowing this application it would promote the regulatory objectives.*

Research from the ICAEW suggests that there is demand for such services from accountants; the extent of this will only become apparent if the designation is granted. If such services are available from ICAEW accredited firms, our view is that this is likely to have a positive impact on competition, access to justice and encouraging a diverse profession. The LSB considers that the regulatory arrangements are sufficient to mitigate against any negative impact.

Quality Assurance

26. As part of the assessment, LSB considered how ICAEW gains assurance that those it regulates are operating within the rules. The Quality Assurance Department (**QAD**) is part of Professional Standards Department and is responsible for delivering the ICAEW's Practice Assurance Scheme. From a meeting with the ICAEW we were satisfied that
- QAD staff are suitably qualified and receive appropriate training
 - there is a system that identifies when a Practice Assurance visit is needed – either on a cyclical basis or as a result of a risk assessment
 - there are appropriate internal quality assurance arrangements which can ensure that the correct issues are being identified and appropriate action is taken, including reporting cases to the relevant ICAEW committee if necessary
 - reviewers are aware of the risk of advice being offered that is beyond the scope of the firm's accreditation; this is something that is a common feature in all areas of QAD Assurance Visits.
27. The QAD is preparing itself for the extension of the legal services scope with plans to provide further training to the reviewers. It will also recruit additional experienced team members should the number of firms seeking accreditation be higher than anticipated.
28. Overall, as a result of our assessment we are reassured that the ICAEW has longstanding independent regulatory systems and processes in place, and flexibility to respond to the new challenges associated with firms undertaking taxation related reserved legal activities and for effective monitoring and supervision of firms.

Advice received on the application

29. Under paragraphs 3(1) and 3(2) of Schedule 10 to the Act, the LSB is required to seek advice from the Competition and Markets Authority (**CMA**), the Legal Services Consumer Panel (**the Panel**) and the Lord Chief Justice (**LCJ**). The advice received and the ICAEW's representations on that advice have been published on our website.
30. The CMA and the Panel were largely supportive of the application.
31. The LCJ raised a number of issues which were considered very carefully by the Board.

32. The LCJ raised similar concerns to those of his predecessors. That regulatory competition could have a negative effect on standards and that, “shopping around” for the least restrictive regulatory framework should be avoided. Currently authorised and licensed persons can switch between regulators but LSB research shows that there is generally limited activity and hardly any in relation to ICAEW. Since the ICAEW’s designation for probate, it has been ICAEW members who have sought accreditation. The fact that ICAEW is currently only designated for probate is likely to be a major factor in this and this could change if it is designated for a wider range of activities. However, the Board concluded that the limitation in some activities to taxation related matters is likely to discourage firms from switching to ICAEW. The LSB already has in place a process for monitoring the level of switching between regulators.
33. In relation to standards of regulation, the LSB’s existing and planned work on regulatory performance will help to ensure that a minimum acceptable standard is achieved by all regulators.
34. The LCJ did not raise any issues in relation to reserved instrument activities (restricted to services related to taxation) nor the administration of oaths. In relation to conduct of litigation, rights of audience and notarial activities, he made the following comments.
- Given his role, the LCJ was understandably concerned with the maintenance of standards of conduct and ethics which impact on the tribunals and courts of England and Wales. Currently ICAEW members can represent clients before the tax tribunals of the General Regulatory Chamber and provide expert litigation support to solicitors relating to both civil and criminal actions. There is no evidence that conduct and ethics have been raised as issues of concern. Widening the scope of ICAEW regulation to include conduct of litigation and rights of audience does change the risk. However, the Board considered that the risk can be effectively mitigated since, at least at the outset, all individuals within ICAEW regulated firms delivering these activities will be subject to the professional conduct standards of their individual regulator.
 - LCJ expressed his serious concern that it is premature to seek designation if the ICAEW has no immediate plans to develop qualifications to authorise individuals for the conduct of litigation and rights of audience. This lack of information on the qualification regime means that the LCJ does not feel that he is in a position to properly advise on the impact on courts and tribunals. The LSB’s view is that the ICAEW decision not to develop qualifications at this time, given the degree of uncertainty for demand, seems sensible. Nevertheless, it does need to be designated if it is to be able to accredit entities and enable these to deliver the further reserved

activities through individuals who are qualified under other approved regulators' arrangements. It is expected that most entities seeking ICAEW accreditation will be licensable bodies and therefore, ICAEW will need to be a licensing authority. Paragraph 1(3) of Schedule to the Act requires that a body can only be designated as a licensing authority in relation to reserved legal activities for which it is (or has applied to be) designated as an approved regulator.

- The LCJ identified the risk that individuals and consumers could be confused as to which body is responsible for regulation if individuals within the entity are subject to separate professional conduct rules. This was an issue that the LSB had identified and which, following discussion with the ICAEW, has led to an amendment of the Legal Services Regulations to clarify the position. Under section 52 of the Act, where there is a conflict between the requirements of the entity and individual regulation, the requirements of the entity regulator prevail. The ICAEW would be able to take action against both the entity and the individual (who will be an affiliate member of ICAEW) in the event that there is a breach of ICAEW regulations. Any breach that might amount to professional misconduct can be referred to the relevant individual regulator for consideration. This situation can arise currently (for example, in relation to a Chartered Legal Executive working in a solicitors firm) and there is an established Memorandum of Understanding between all of the regulators to deal with such situations.

35. On balance, having considered very carefully his advice, the Board was of the view that there are effective controls and mitigations to address the significant issues raised by the LCJ.

Decisions

36. The LSB Rules (Rules for applications for Approved Regulator and Qualifying Regulator designation) giving effect to paragraphs 13(2) and 13(3) of Schedule 4 to the Act set out the matters on which the LSB must be satisfied when granting an application for designation as an approved regulator.

37. The LSB has considered the application and is satisfied that the criteria for granting an approved regulator designation application have been met.

38. The LSB Rules (Rules for applications to be designated as a LA) giving effect to paragraphs 11(2) and 11(3) of Schedule 10 to the Act set out the matters on

which the LSB must be satisfied when granting an application for designation as a licensing authority.

39. Therefore the LSB has decided to:

- recommend to the Lord Chancellor under paragraph 16(2) of Schedule 4 to the Act that the ICAEW be designated as an approved regulator for the reserved legal activities set out at paragraph 10 of this decision;
- recommend to the Lord Chancellor under paragraph 14(2) of Schedule 10 to the Act that the ICAEW be designated as a licensing authority for the reserved legal activities set out at paragraph 10 of this decision; and
- include in the recommendation to the Lord Chancellor, the recommendation that the ICAEW's Legal Services Regulations be approved for use by the ICAEW in its status as an approved regulator and licensing authority when the Lord Chancellor exercises his authority under paragraph 18(1) of Schedule 4 and paragraph 16(1) of Schedule 10 to the Act.

40. This document constitutes the decision notice which is being provided to the applicant under paragraph 14(3) of Schedule 4 and paragraph 12(3) of Schedule 10 to the Act. It is being published under paragraph 14(5) of Schedule 4 and paragraph 12(5) of Schedule 10 to the Act.

Chronology

- The ICAEW made its application to the LSB on 20 July 2016;
- The LSB confirmed receipt of an application from the ICAEW on 21 July 2016;
- The decision period started on 20 July 2016 and ends on 19 July 2017;
- The application was published on the LSB website on 10 August 2017;
- The advice from the mandatory consultees, selected consultee and the ICAEW's representations to that advice were published on the LSB website on 20 February 2017;
- This decision notice will be published on our website on 26 June 2017.

Legal Services Board

23 June 2017

Annex 1

Authority for the decisions

Applications for designation as an approved regulator

1. Paragraph 3(2) of Schedule 4 to the Legal Services Act 2007 (**the Act**) enables a body to apply to the Legal Services Board (**LSB**) requesting that the LSB recommends that an order be made by the Lord Chancellor to designate that body as an approved regulator in relation to identified reserved legal activities⁷. The remainder of paragraph 3 of Schedule 4 to the Act identifies other requirements that are imposed by the Act or given effect to by the LSB Rules in relation to the application made by that body.
2. Part 2 of Schedule 4 to the Act also documents the processes, participants and criteria that will be applied to any such application that is made. These provisions enable the LSB to make rules at paragraphs 3(3) for the form and manner of the application and 3(4) for the amount of the prescribed (application) fee. In accordance with paragraph 4(2), the LSB must make rules about the procedures and criteria that it will apply when determining whether to refuse to consider, or to continue its consideration of an application. Additionally, in accordance with paragraph 11(3), the LSB must make rules governing the making of oral and written representations.
3. Paragraph 13(1) of Schedule 4 to the Act also requires the LSB to make rules about how it will determine if it should recommend to the Lord Chancellor that an application for designation by a body to become an approved regulator in relation to identified reserved legal activities should be made. These Rules for Approved Regulator and Qualifying Regulator designation came into effect on 1 January 2010 (“Designation Rules”).⁸
4. The LSB may only grant an application in relation to a particular reserved legal activity if it is satisfied in relation to the requirements under the Designation

⁷ The term “approved regulator” is defined in section 20 of the Act and a list of the Approved Regulators and the reserved legal activities for which they are approved is contained in Schedule 4 Part 1 of the Act. The term “reserved legal activities” is defined at Section 12 of the act and a list of the reserved legal activities and a definition of what is comprised within each of them is contained in Schedule 2 of the Act. Both Schedules will be amended from time to time in accordance with activities conducted in accordance with provisions of the Act.

³ The Rules for Approved Regulator designation application can be found at http://www.legalservicesboard.org.uk/what_we_do/consultations/closed/pdf/Qualifying_Regulator_status/201103_28_Rules_for_applications_Approved_Regulator_Qualifying_Regulator_designation_1_April.pdf

Rules giving effect to paragraphs 13(2)⁹ and 13(3)¹⁰ of Schedule 4. The Designation Rules provide the mechanism through which the LSB carries out its assessment against these requirements and the LSB has therefore satisfied itself of compliance with the requirements of paragraphs 13(2) and 13(3) by an assessment of the application and proposed regulatory arrangements against the Designation Rules.

5. The LSB is also required to approve what the body proposes as its regulatory arrangements if the proposed order is made.
6. The LSB will approve regulatory arrangements in so far that they appear to achieve their intended outcome and satisfy the conditions in paragraphs 13(2) (a) to have appropriate internal governance arrangements in place and 13(2) (c) of Schedule 4 that the proposed regulatory arrangements make appropriate provision for the proposed reserved legal activity. The LSB is also required under paragraph 13(2)(d) to ensure that the proposed regulatory arrangements comply with the requirement imposed by sections 52 and 54 of the Act (resolution of regulatory conflict) and that such arrangements comply with the requirements imposed in relation to the handling of complaints (sections 112 and 145) – under paragraph 13(2)(e).

Applications for designation as a licensing authority

7. Paragraph 1(2) of Schedule 10 to the Act enables a body to make an application requesting that the LSB recommends that an order be made by the Lord Chancellor to designate that body as a licensing authority in respect of identified reserved legal activities. Paragraph 1(3) of Schedule 10 provides that a body may only make such an application if it is an existing approved regulator in relation to the activity or it has made an application under Part 2 of Schedule

⁹ Paragraph 13 (2) of Schedule 4 states that rules under sub-paragraph 1 must, in particular provide that the Board may grant an application in relation to a particular reserved legal activity only if it is satisfied – (a) that, if an order were to be made under paragraph 17 designating the body in relation to that activity, the applicant would have appropriate internal governance arrangements in place at the time the order takes effect, (b) that, if such an order were to be made, the applicant would be competent, and have sufficient resources, to perform the role of approved regulator in relation to the reserved legal activity at that time, (c) that the applicant’s proposed regulatory arrangements make appropriate provision, (d) that the applicant’s proposed regulatory arrangements comply with the requirement imposed by sections 52 and 54 (resolution of regulatory conflict) and (e) that those arrangements comply with the requirements imposed by sections 112 and 145 (requirements imposed in relation to the handling of complaints).

¹⁰ Paragraphs 13(3)(a) and (b) of Schedule 4 provides that the LSB must in particular be satisfied that the exercise of the applicant’s regulatory functions would not be prejudiced by any of its representative functions and that decisions relating to the exercise of regulatory functions would, so far as reasonably practicable, be taken independently from decisions relating to the exercise of representative functions.

- 4 (designation of approved regulators) for the Board to recommend that an order be made by the Lord Chancellor designating the body as an approved regulator in relation to the activity.
8. Part 1 of Schedule 10 to the Act also documents the processes, participants and criteria that will be applied to any such application that is made. These provisions enable the LSB to make rules at paragraphs 1(4) specifying the form and manner of the application and 1(5) for the amount of the prescribed (application) fee. In accordance with paragraph 2(2), the LSB must make rules about the procedures and criteria that it will apply when determining whether to refuse to consider or to continue its consideration of an application. Additionally, in accordance with paragraph 9(3), the LSB must make rules governing the making of oral and written representations.
9. Paragraph 11(1) of Schedule 10 to the Act also requires the LSB to make rules about how it will determine if it should recommend to the Lord Chancellor that an application for designation by a body to become a licensing authority in relation to identified reserved legal activities should be made. These Rules for Licensing Authority Designation Applications came into effect on 1 January 2010¹¹ (“LA Designation Rules”).
10. The LSB may only grant an application in relation to a particular reserved legal activity if it is satisfied in relation to the requirements under its Rules giving effect to paragraphs 11(2)¹² and 11(3)¹³ of Schedule 10. The LA Designation Rules provide the mechanism through which the LSB carries out its assessment against these requirements and the LSB has therefore satisfied itself of compliance with the requirements of paragraphs 11(2) and 11(3) by an assessment of the application and proposed regulatory arrangements against the LA Designation Rules.

¹¹ The Rules for Licensing Authority Designation Applications can be found on the LSB website:

http://www.legalservicesboard.org.uk/what_we_do/regulation/pdf/designating_la_rules_v2_june_2011_final.pdf.

¹² Paragraphs 11(2)(a) to (d) provide that the LSB may only grant an application if satisfied that the applicant’s proposed licensing rules in relation to the activity comply with the requirements of section 83; that if an order to be made under paragraph 15 designating the body in relation to the activity there would be a body with power to hear and determine appeals; the applicant would have appropriate internal governance arrangements in place at the time the order takes effect; and the applicant would be competent, and have sufficient resources to perform the role of licensing authority in relation to the activity at the time the order takes effect.

¹³ Paragraphs 11(3)(a) and (b) of Schedule 4 provides that the LSB must in particular be satisfied that the exercise of the applicant’s regulatory functions would not be prejudiced by any of its representative functions and that decisions relating to the exercise of regulatory functions would, so far as reasonably practicable, be taken independently from decisions relating to the exercise of representative functions.

11. Paragraph 16(1) provides that where an order is made by the Lord Chancellor under Paragraph 15 of Schedule 10, the applicant's proposed licensing rules are at the same time treated as having been approved by the LSB.

Annex 2

Assessments of ICAEW for designation as an approved regulator and licensing authority

Approved regulator assessment

Criteria for designation as an approved regulator	Summary of the LSB assessment	MET or not MET by the applicant
<p>Appropriate internal governance arrangements at point of designation; regulatory functions not be prejudiced by its representative functions; as far as reasonably practical, regulatory decisions be taken independently of representative ones.</p>	<p>The LSB is satisfied the arrangements for the Legal Services Committee (LSC) will allow it to operate independently from the representative functions of the ICAEW.</p> <p>The ICAEW is not an Applicable Approved Regulator (AAR) under the LSB's Internal Governance Rules (IGRs) and so is not required to adhere to the LSB's full IGRs. The ICAEW must ensure their governance arrangements are in the spirit of independence and we are satisfied that the arrangements are capable of delivering this.</p> <p>There is further comment in this paper, including an explanation of ICAEW's definition of lay, which <u>excludes</u> both accountants and lawyers. The ICAEW definition goes one step further than the definition of lay person within Schedule 1, paragraphs 2(4) and (5) of the Act which excludes lawyers only (as authorised persons), but not accountants.</p>	<p>MET</p>
<p>Applicant competent has sufficient resources to perform the role of approved regulator in relation to reserved legal activities.</p>	<p>The LSB is satisfied that the ICAEW is competent and has sufficient resources in which to regulate RLA.</p> <p>This assessment is based on a review of ICAEW's regulatory capacity and capability; resources; budget and fees scale for RLA firms. We conducted a meeting with the Quality Assurance Team to gather information in relation to the approach to authorisation and supervision, and inspection visits.</p> <p>The ICAEW is a well-established regulator of accountancy services and since 2014 of probate. Much of the regulatory framework for RLA is based on a tailored version of the ICAEW's current processes for audit and insolvency.</p>	<p>MET</p>

Criteria for designation as an approved regulator	Summary of the LSB assessment	MET or not MET by the applicant
	The LSB is satisfied that the ICAEW have met this criterion in full.	
Applicant proposed regulatory arrangements make appropriate provision for the regulation of those it wishes to authorise; examples of evidence found in Part 2 of LSB’s Designation Rules (approved regulator)	<p>The LSB has conducted a thorough review of the proposed regulatory arrangements for ICAEW as an approved regulator. There has also been a review by the LSB legal team.</p> <p>The LSB is satisfied that the regulatory arrangements make appropriate provision for those who it wishes to authorise for RLA. The regulatory arrangements cover the requirements set out in the LSB’s Designation Rules which include:</p> <ul style="list-style-type: none"> • Client money; • Acting in client interest; • Compliance with professional principles; • Complaints handling; • Supporting competition; • Independence; • Rule of law; • Diversity; and • Consumers being actively involved in decision making throughout their dealings with the profession. 	MET
Compliance with s.52 of the Act makes provision reasonably necessary to prevent regulatory conflicts.	ICAEW has included within its proposed Legal Service Regulations a requirement that firms inform ICAEW promptly – within 10 business days – if they consider that any other regulatory requirement to which they are subject (including the requirements of another approved regulator) might cause them to compromise their compliance with the ICAEW regulations.	MET

Criteria for designation as an approved regulator	Summary of the LSB assessment	MET or not MET by the applicant
	<p>Since 2010, ICAEW have been involved in an inter-regulator working group that has been considering the issues around regulatory conflict in multi-disciplinary practices and ABS. This has led to the creation of a Multi-Disciplinary Practices Framework Memorandum of Understanding (MDP MoU). ICAEW is a signatory to the MDP MoU, which provides a framework for cooperation, coordination and the exchange of information between regulators and professional bodies. Although a non-binding document, it sets out a statement of intent comprising principles to which all signatories agree to adhere, as far as they practically and lawfully can.</p> <p>The LSB is satisfied with the procedures in place to deal with regulatory conflict if it arises.</p>	
<p>Compliance with s.54 of the Act as reasonably practical prevent external regulatory conflicts, provide for resolution of any external regulatory conflicts that arise; prevent unnecessary duplication or regulatory provision made by an external body</p>	<p>ICAEW envisage that conflict could arise with the requirements of other regulators that are not approved regulators under the Act. Given the nature of its members' work, ICAEW consider that the most likely source of conflict would be with the regulatory requirements of the FRC, the Financial Conduct Authority (FCA) and the IS.</p> <p>The FCA is a signatory to the MDP MoU and a member of the working party. ICAEW anticipates that the FCA and other professional bodies will discuss issues around the scope and risks of regulatory conflict under the Act.</p> <p>The LSB is satisfied with the procedures in place, to deal with external regulatory conflict if it arises.</p>	<p>MET</p>
<p>Compliance with s.112 of the Act make provision for each authorised person to establish and maintain a</p>	<p>ICAEW's regulatory arrangements make provision for firms to notify their existing clients of their right to make a complaint at the first opportunity.</p> <p>ICAEW also indicate that in keeping with an outcomes focused approach to legal service regulation, the regulations do not prescribe the steps that firms should</p>	<p>MET</p>

Criteria for designation as an approved regulator	Summary of the LSB assessment	MET or not MET by the applicant
complaints procedure;	<p>take in seeking to resolve complaints. They provide firms with the freedom to resolve matters as they see fit, but contain some minimum requirements to ensure that clients' rights and interests are protected and that they are able to raise their concerns and access redress as appropriate.</p> <p>The LSB is satisfied that the regulations for complaints handling are compliant with section 112 of the Act. We also note that the ICAEW's arrangements in relation to complaints handling are in line with the LSB's decision document on changes to first-tier complaints handling requirements and guidance for approved regulators.¹⁴</p>	
Compliance with s.145 of the Act requiring each authorised person to give ombudsmen assistance when requested; and make provision for enforcement of that requirement;	<p>ICAEW have set out a framework for compliance with section 145 of the Act. It requires authorised persons to give the Legal Ombudsman assistance when requested. This is supported in the Legal Services Regulations. If a firm fails to cooperate with the Legal Ombudsman (Legal Services Regulation 7.9), this may result in disciplinary procedures against that firm.</p> <p>ICAEW is in the process of agreeing a MoU with LeO to ensure procedures are in place for sharing of information.</p> <p>The LSB is satisfied that ICAEW's regulations are compliant with section 145 of the Act.</p>	MET
Authorised persons may not provide	Not relevant to this application as the ICAEW is not seeking Qualifying Regulator status. ¹⁵	N/a

¹⁴ For further information on the Guidance, please refer to the LSB website at this link: http://www.legalservicesboard.org.uk/what_we_do/consultations/closed/pdf/2016/20160715_s112_Decision_Document.pdf

¹⁵ Means a body, which is a Qualifying Regulator for the purposes of Section 86A of the 1999 Act by virtue of Part 1 of schedule 18 to the Act 2007 (Approved Regulators approved by the Board in relation to immigration matters).

Criteria for designation as an approved regulator	Summary of the LSB assessment	MET or not MET by the applicant
immigration advice unless authorised by ICAEW to do reserved legal activities;		
Consistency of regulatory arrangements with s.28 of the Act (RO, BRP etc).	ICAEW's application includes a statement of policy on how they will exercise their regulatory functions as an approved regulator and licensing authority in accordance with the requirements of section 28 of the Act. The statement demonstrates how their proposed regulatory arrangements will support the regulatory objectives and professional principles set out in section 1 of the Act.	MET

Licensing authority assessment

Criteria for designation as an licensing authority	Summary of the LSB assessment	MET or not MET by the applicant
<p>Licensing Rules must comply with s.83 of the Act. When considering the application the Board will consider how consistent an applicant’s proposed licensing rules are with the LSB’s guidance on licensing rules.</p>	<p>Section 83 of the Act sets out what must be contained in the licensing rules of a licensing authority; the licensing authority application has been assessed against this and we are satisfied that the proposed regulatory arrangements meet the requirements.</p> <p>We note that the ICAEW has aimed to provide a single regulatory framework for the regulation of authorised and licensed firms and that the regulations for licensed firms will differ only where required by the Act.</p> <p>The ICAEW expects to accredit mainly firms whose principal business is accountancy. ICAEW do not intend to place restrictions on the nature or the extent of external ownership other than those set out in the Act. The Legal Services Committee consider all applications on a case-by-case basis, and ICAEW will impose conditions and/or restrictions on accreditation where necessary to protect the public interest.</p> <p>ICAEW will not restrict its members from working within entities regulated by other approved regulators or licensing authorities.</p> <p>The LSB is satisfied that the licensing rules comply with section 83 of the Act.</p>	<p>MET</p>
<p>An appeals body in place to hear and determine appeals against decisions of the applicant</p>	<p>As with current ICAEW appeals in relation to probate, all appeals will be directed to the First Tier Tribunal (General Regulatory Chamber). This is consistent with the approach favoured by the LSB which considers that a single mechanism for all appeals in relation to ABS.</p>	<p>MET</p>
<p>Appropriate internal governance arrangements at point of designation; regulatory functions not be prejudiced by</p>	<p>The same governance arrangements apply to ICAEW whether acting as an approved regulator or licensing authority. The LSB is satisfied that ICAEW will have appropriate internal governance procedures in place to</p>	<p>MET</p>

Criteria for designation as an licensing authority	Summary of the LSB assessment	MET or not MET by the applicant
its representative functions; as far as reasonably practical, regulatory decisions be taken independently of representative ones	meet the independence requirement when acting as a licensing authority.	
Applicant competent , has sufficient resources to perform the role of licensing authority in relation to RLA	<p>The ICAEW's regulatory resources and processes will be applied equally to the regulation of authorised and licensed firms</p> <p>The LSB is satisfied that this criterion has been met in relation to ICAEW' status as a licensing authority.</p>	MET
Approach to licensing rules are consistent with requirements in s.28 of the Act (RO, BRP etc)	<p>The ICAEW will have a single regulatory framework, the Legal Services Regulations, in its capacity as approved regulator and licensing authority (except where it explicitly states specific requirements in relation to ABS).</p> <p>A review of the ICAEW's licensing rules has confirmed that the LSB is satisfied that this criterion has been met.</p>	MET
In accordance with s.82 of the Act, an applicant must prepare and issue a policy statement as to how, in exercising functions under Part 5 of the Act, it will comply with s.28 of the Act	<p>The ICAEW has provided a policy statement demonstrating how the ICAEW's proposed regulatory arrangements will support the regulatory objectives and professional principles in section 1 of the Act.</p> <p>The LSB is satisfied that the criterion has been met in relation to ICAEW' status as a licensing authority.</p>	MET