



Ms Dawn Reid  
The Legal Services Board  
Victoria House  
Southampton Row  
London WC1B 4AD

**Sent by email and post**

1 July 2013

Dear Dawn,

**ICAEW's application to become an approved regulator & licensing authority for probate activities under the Legal Services Act 2007**

On 14 December 2012 ICAEW submitted an application to the Legal Services Board (LSB) to become an approved regulator and licensing authority for the reserved service of probate under the provisions of the Legal Services Act 2007 (the Act).

In the intervening period the application has been reviewed by the LSB, and visits made to the offices of ICAEW in Milton Keynes by officials from the LSB on 8 April and 30 May 2013. At these meetings and by way of other correspondence, clarifications and amplifications have been sought on various aspects of the application which have required minor amendments and supplements to the application. In addition certain documents which were under development at the time of the application and only available in draft have now been finalised. Where relevant the Professional Standards Board has approved revised regulatory and guidance documents at their meeting of 25 June 2013.

The LSB has formally requested that all these amendments and supplemental information be brought together as a final submission letter, and this document purports to fulfil that role. It is understood that this information will be shared with the Ministry of Justice; the Legal Services Consumer Panel; the Lord Chief Justice, and possibly the other mandatory or selected consultees.

Commentary on the changes and supplements are set out below, and where appropriate annexes have been attached which show the revised documentation. These may be summarised as follows;

Item	Description	Paragraphs	Appendix
A	Details of changes to the Probate Regulations	1	A
A	Copy of the Probate Regulations	1	B
B	Details of changes to the Probate Compensation Scheme Regulations	2	C
B	Copy of the Probate Compensation Scheme	2	D

Item	Description	Paragraphs	Appendix
	Regulations		
C	The amended fee scale for the Probate Registration Fees and the Compensation Scheme Levy	3 – 4	E
C	The rationale for the agreed fee scale for the Probate Registration Fees and the Compensation Scheme Levy	3 – 4	F
C	A copy of the Fee Scale for the Probate Registration Fees and the Compensation Scheme Levy	3 – 4	G
D	Details of the changes to the draft application form to become an accredited probate firm	5	H
D	Details of the changes to the draft application form to appoint: Authorised Individual; Head of Legal Practice; or Head of Finance and Administration	5	I
D	Details of the changes to the draft application form to approve a non-authorised owner of a licensed firm	5	J
D	Details of the changes to the draft application form for affiliate status	5	K
D	Draft application form to become an accredited probate firm	5	L
D	Draft application form to appoint: Authorised Individual; Head of Legal Practice; or Head of Finance and Administration	5	M
D	Draft application form to approve a non-authorised owner of a licensed firm	5	N
D	Draft application form for affiliate status	5	O
E	Details of the changes to the Guidance on Sentencing	6	P
E	A copy of the Draft Guidance on Sentencing	6	Q

We believe that this document completes the outstanding information disclosure requirements of the LSB and hope that the papers are now in order for the next stage of the approval process. Should any further clarifications be required please do not hesitate to contact me or Pat Adair as we will be happy to assist in this respect.

Yours faithfully



Vernon Soare  
Executive Director, Professional Standards

T +44(0) 20 7920 8787

E [Vernon.soare@icaew.com](mailto:Vernon.soare@icaew.com)

## A. Probate Regulations

1. The Probate Regulations were included in the application as Annex 1. As a consequence of feedback from the Tribunal Procedure Committee of the First-tier Tribunal and following further scrutiny of the regulations, changes have been made to the regulations as shown in **Appendix A**. There have been no material amendments made to these regulations and the amendments were agreed by the Professional Standards Board (PSB) at a meeting on 25 June 2013. A finalised copy of these regulations is attached marked **Appendix B**.

## B. Probate Compensation Scheme Regulations

2. The Probate Compensation Scheme Regulations (the PCSRs) were included in the application as Annex 18. The PCSRs have subsequently undergone a review and have been amended, the material amendments of which, and the rationale for them, are set out below:
  - 2.1 A new regulation 3.2 has been added which gives the Probate Committee the ability to refuse to make a grant if payment could cause the Probate Compensation Scheme to exhaust all funds available for payment at the time of the decision on whether to make the grant.
  - 2.2 This amendment is considered prudent to reflect the self-financing approach to regulation – ie, the scheme should be funded through levies on probate practitioners only and there should be no residual liability for ICAEW or its members generally. This is in keeping with the general principle of a separation of regulatory and representative function in the Legal Services Act 2007 ('the Act') and the principle that the wider ICAEW membership should not cross-subsidise the activities of a small regulated population.
  - 2.3 We would highlight that ICAEW's compensation arrangements will be funded by master indemnity policy, and that, in addition, the annual compensation levy is intended to build a fund over time which will finance grants in the event that ICAEW lacks indemnity under the master policy. Accordingly, it is anticipated that in determining applications for grants the Probate Committee would seek to rely on regulation 3.2 in only the most exceptional of circumstances.
  - 2.4 Regulation 19 on waivers has been deleted. The rationale for this deletion is:
    - As there is an element of discretion built into most of the regulations referred to in this regulation, it was felt that the power to exercise a waiver was redundant;
    - Further, we were mindful that insurers have also said that we will not be indemnified for any grants made following the exercise of a waiver under this regulation.

The amendments made are shown in **Appendix C** and the finalised regulations that were agreed by the PSB on 25 June 2013 are marked **Appendix D**.

### C. Fee scale for the probate registration fees and compensation scheme levy

3. The fee scales for the probate registration fees and the compensation scheme levy were contained in the ICAEW Probate Business Plan 2012 as Annex 17 of the application. This proposed that the fee scales for the annual registration levy should start at £599 for a sole practitioner and the compensation levy should start at £399 for a sole practitioner and that they should increase with the size of the firm.
4. During further consultation, concern was expressed that these proposed fee scales could preclude entry to the market for the sole practitioner/small firms. The fee scales were therefore reconsidered and amended as set out in **Appendix E**. **Appendix F** sets out the rationale for these amendments and a finalised copy of the fee scale which was approved by the PSB on 25 June 2013 is marked **Appendix G**.

### D. Draft Probate Application Forms

5. Draft probate application forms were included in the application as:
  - Annex 15A – Application to become an accredited probate firm
  - Annex 15B – Application to appoint: authorised individual; Head of Legal Practice; or Head of Finance and Administration
  - Annex 15C – Application to approve a non-authorised principal or shareholder of a licensed firm
  - Annex 15D – Probate – Application for affiliate status

These forms have been reviewed and amended and details of these amendments are shown in **Appendices H, I, J, and K**. No material changes have been made to the application forms. It will be evident from the changes marked on **Appendices H – K**, that the changes have been made to aid clarity and to ensure that the forms are consistent with the terminology in the Probate Regulations. Draft application forms are marked **Appendices L, M, N, and O**. These forms have been submitted in draft as it is envisaged that further review and amendment may be required as the forms will be scrutinised further when formalising and agreeing internal application procedures and processes. These changes should be largely explanatory and linked to process flows and will not change the substance of the data and undertakings requested.

### E. Draft Guidance on Sentencing

6. The Draft Guidance on Sentencing has been reviewed and amended in accordance with ICAEW's implementation plan. It now includes a section specific to complaints relating to probate activities following discussions that we have had with the LSB. The details of the amendments that have been made are shown in **Appendix P** and the Draft Guidance is marked as **Appendix Q**. This Guidance has been submitted in draft as the starting points for the complaints require further consideration and discussion before they can be finalised.

### F. Why ICAEW requires intervention powers as an approved regulator in addition to having such powers as a licensing authority

7. ICAEW requires intervention powers as an approved regulator in addition to having such powers as a licensing authority in order to ensure a consistent approach to enforcement in relation to accredited probate firms, whether they are authorised or licensed, and to increase consumer protection (one of the Act's regulatory objectives).

8. As set out in paragraphs 4.129 – 4.134 of the application, despite the low incidence of fraud historically among our members, we recognise that there may be a risk to the consumer in cases where firms engage in probate and estate administration and hold client and/or estate monies. Therefore, in order for ICAEW to protect the consumer and the wider public interest, we consider that it would be prudent to hold intervention powers under the Act for all accredited probate firms, whether they be authorised or licensed.
9. In ICAEW's view, the ability to intervene in cases of fraud or financial mismanagement will be particularly important in relation to authorised firms, the vast majority of which will be sole practices or very small firms where PII could be invalidated in the event of fraud. ICAEW sees the risk to the consumer being increased in these circumstances and believes that it should have the ability to intervene into authorised firms if required, in the same manner as will be possible for licensed firms under schedule 14 of the Act. In ICAEW's view, such an approach is consistent with regulatory best practice and the Act's key objective of strong consumer protection.

**G. Whether ICAEW is able to obtain powers of intervention as an approved regulator, through routes other than by way of statutory order under section 69 of the Legal Services Act 2007**

10. ICAEW has sought legal advice on possible alternative routes. The advice received is that some, but not all, of the powers could possibly be acquired by way of a change to the disciplinary bye-laws (DBLs). However, in counsel's opinion, the powers in schedule 14 of the Act go beyond what ICAEW could create for itself by way of a change to the DBLs. Provisions such as paragraphs 3(6)-(9), 7(1)-(2), 9(1)-(4) of schedule 14 and others give the High Court jurisdiction to make orders on the application of a licensing authority. In counsel's opinion ICAEW does not have power, through its bye-laws, to invest the High Court with similar jurisdiction in relation to an approved regulator.
11. Further, ICAEW cannot create criminal offences. Paragraph 3 and 8 do so in the case of licensed bodies. Again, in counsel's opinion, it is not open to ICAEW to reproduce these provisions.
12. Therefore, ICAEW will need to obtain powers of intervention as an approved regulator by way of statutory order under section 69 of the Legal Services Act 2007.