



ICAEW's Application to the Legal Services Board for Approval of Alterations to its Regulatory Arrangements in order to comply with the Internal Governance Rules

INTRODUCTION

1. ICAEW is an Approved Regulator and Licensing Authority for legal services under the Legal Services Act 2007 (the Act) and therefore, being a unitary body, has both representative and regulatory functions.
2. Under Section 30 of the Act the Legal Services Board must make rules (Internal Governance Rules (IGRs)) setting out requirements to be met by Approved Regulators for the purpose of ensuring:
 - (a) that the exercise of an Approved Regulator's regulatory functions is not prejudiced by its representative functions, and
 - (b) that decisions relating to the exercise of an Approved Regulator's regulatory functions are so far as reasonably practicable taken independently from decisions relating to the exercise of its representative functions.
3. The LSB's IGRs therefore place an overarching duty on an Approved Regulator to ensure that;
 - (a) The exercise of its regulatory functions is not prejudiced by any representative functions it may have;
 - (b) It delegates the discharge of its regulatory functions in compliance with section 28 of the Act to a suitably independent body ("Regulatory Body"); and
 - (c) It only retains a role to the extent that this is reasonably necessary to be assured that regulatory functions are being discharged in compliance with section 28 of the Act.
4. In accordance with the Act and the IGRs published in 2011 ICAEW (the Approved Regulator) had delegated its regulatory functions to its Regulatory Body (the Professional Standards Department (PSD) and the ICAEW Regulatory Board (IRB) and the ICAEW Regulatory Board (IRB) in turn had delegated these powers to the Probate Committee.

5. On 24 July 2019 the LSB published new IGRs which has necessitated a number of alterations to be made to ICAEW's current regulatory arrangements in order to comply with them.
6. Part 3 of Schedule 4 of the Act provides that Approved Regulators must obtain approval from the LSB to alter any of their regulatory arrangements and the LSB assesses such applications against the criteria in the Act (Schedule 4, 25(3)) which support the duties set out in section 28.
7. In accordance with Part 3 of Schedule 4 of the Act ICAEW is applying to the LSB for approval of the alterations it has made to its regulatory arrangements necessitated by the introduction by the LSB of new IGRs.

THE APPLICATION

Alterations to Regulatory Arrangements

8. This application is submitted by ICAEW's Regulatory Body. A separate application will be submitted by ICAEW as an Approved Regulator with a residual role.
9. As required by the LSB's Rules for Rule Change Applications, this application sets out:
 - (a) Details of the proposed alterations to ICAEW's regulatory arrangements
 - (b) Details of such of ICAEW's regulatory arrangements as are relevant to the Application including:
 - (i) The nature and effect of the existing regulatory arrangements
 - (ii) The nature and effect of the proposed alterations; and
 - (iii) An explanation of why ICAEW wishes to make the alterations in question
10. **Appendix A** to this Application sets out ICAEW's existing regulatory arrangements and the nature and effect of the alterations ICAEW proposes to make to these arrangements. These are made;
 - (a) To change the entity within ICAEW which would be responsible for the supervision of all of our legal services regulatory work;
 - (b) In order to comply with the LSB's new IGRs. In particular these rules changes are made pursuant to achieving compliance with the following;
 - (i) Rule 4 – Regulatory autonomy
 - (ii) Rule 8 – Appointments and Terminations
 - (iii) Rule 11 – Shared Services
11. It should also be noted that we are making these changes for two separate purposes but doing them both at the same time. Firstly we are making the changes because we believe it is now right and proper for the IRB's policy / strategy remit to be extended over all regulatory policy

and that the LSB has itself expressed a preference for us moving to this model. Secondly there are other changes which are required in order to comply with the new IGRs and we have therefore sculpted these changes based on the IRB being the new apex of our legal services regulatory framework.

12. **Appendix B** to this Application is a schedule of the documents that have either been amended or created to effect the alterations to ICAEW's regulatory arrangements outlined in **Appendix A** and each of these Appendices cross refer to each other's relevant parts in this regard.
13. **Appendix B** also explains why the documents have been created or the reasons for the amendments that have been made and sets out the internal governance timetable for gaining approval for these amendments and therefore the timeline for implementation of each alteration.
14. **It should be noted** that the meeting dates are those that were scheduled before the Corona virus outbreak. Whilst current intention is to still hold those meetings be it in a different setting and format, there is no guarantee that they will take place at that scheduled time or if they do, may well do so with a very limited agenda that may not include approval of regulatory internal governance changes for implementation of IGRs. Nevertheless it is considered at this point the timetable is as fair a one we can project given current circumstances..
15. All documents listed in the schedule in Appendix B are appended to that document and these are listed at the end of this application.
16. Subject to the caveat above details of when ICAEW hopes to implement the alterations:

Implementation Timetable	
Submission of application for approval	April 2020
Decision by LSB	May 2020
Final approval of ICAEW Council	3 June 2020
Implementation of alternations to regulatory arrangements	June – 22 July 2020

Statement on Regulatory Objectives

Protecting and promoting the public interest

17. The principle of independence of regulation within the Approved Regulator is key to this objective. Compliance with the LSB's IGRs is therefore important to increase public confidence and satisfy the public interest objective.

Supporting the constitutional principles of the rule of law

18. We consider that ICAEW's proposed appointments processes ensure that the Regulatory Board is independent and that ICAEW's regulation is accessible, intelligible, clear and predictable and fair which is consistent with the rule of law.

Improving access to justice

19. Access to justice is the acting out of the rule of law in particular or individual circumstances. Independence of regulation gives consumers the confidence to enter the legal services market and therefore improves access to justice. ICAEW's compliance proposals will ensure this.

Protecting and promoting the interests of consumers

20. Strong, independent and transparent regulation offers consumers the opportunity to make informed choices about quality, access and value. Independent regulation ensures a robust and transparent complaints handling process which gives consumers the confidence that they are protected.

Promoting competition in the provision of services

21. Providing consumers with the confidence to enter the legal services market by providing them with the assurance that they are protected encourages a rigorous and robustly competitive market which in turn encourages legal services providers to respond to consumer demand by providing new and innovative services and mechanisms for delivery and access. This leads to the provision of 'better' information about legal services, greater choice and access. A successful market will be one where clients are empowered to make informed choices about quality, access and value. ICAEW believes that its proposed regulatory arrangements enable its regulated firms to be free to respond to commercial pressures confident that our regulation will only restrict them where it is consistent with the regulatory objectives and better regulation principles. ICAEW's regulation supports rather than hinders regulated firms when they deliver services in a way that is compatible with the regulatory objectives and intervenes when they risk falling short of the requisite standards.

Encouraging an independent, strong, diverse and effective legal profession

22. An independent profession serves to promote the principle that legal service providers should be free from inappropriate influence to act as an agent of the client, in their best interests and ICAEW believes that its regulatory arrangements supports this and helps regulated persons to identify and manage any potential threat to their independence.

ICAEW also promotes equality and diversity through its regulatory framework.

Increasing public understanding of the citizen's legal rights and duties

23. ICAEW believes that its proposed regulatory arrangements provide clarity and transparency about rights and responsibilities which helps to reduce complaints and conflict, and therefore increases confidence and empowers consumers. Empowered consumers make informed choices which drives providers of legal services to deliver the range of quality, access and value that consumers feel confident to demand.

Promoting and maintaining adherence to the professional principles

24. An independent and robust regulatory process promotes and ensures adherence to the professional principles

Statement in respect of the Better Regulation Principles

25. The Better Regulation Principles are the principles under which regulatory activities should be transparent, accountable, proportionate, consistent and targeted only at cases in which action is needed.
26. ICAEW believes that, as its proposed regulatory arrangements ensure compliance with the LSB's IGRs, they fulfil ICAEW's obligations to comply with the obligations under section 28 of the Act to have regard to the Better Regulation Principles.
27. Independence of regulation ensures transparency and accountability is ensured by ICAEW's arrangements that require its Regulatory Body to provide the Approved Regulator with assurance that it is complying with the Act and the IGRs; whilst at the same time protecting the independence of the regulatory functions by the placement of proportionate restrictions on how that information can be used by the Approved Regulator.
28. Independence of the appointments processes also ensure transparency and accountability but ICAEW believes that the alterations made to its regulatory arrangements are targeted only at areas where action is needed in order to comply with the IGRs and are therefore proportionate.
29. Compliance with the IGRs also ensures consistency between ICAEW's regulatory arrangements and those of other Approved Regulators.
30. ICAEW as a regulator of other reserved services outside the legal sector is obliged to follow the better regulation principles set out in section 23 of the Legislative and Regulatory Reform Act 2006. The changes made have regard to the balance on impact on the administration and delivery of those services as well as the effective provision of legal services

Statement in respect of other Approved Regulators

31. ICAEW is of the opinion that none of the alterations set out in this application affects areas regulated by other Approved Regulators

Contact details

32. If the LSB has any queries in relation to this application, please contact:

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APPENDICES

Appendix A: ICAEW's Internal Governance Rules Compliance Arrangements

Appendix B: Alterations to ICAEW's Regulatory Arrangements made in order to comply with the LSB's Internal Governance Rules

Please note that:

Appendices 1 – 5 are documents controlled by ICAEW's Regulatory Body and therefore form part of the Regulatory Body's application.

Appendices 6 – 9 and 13 are documents controlled by the Approved Regulator and therefore form part of the Approved Regulator's application.

Appendices 10 – 12 are joint documents and therefore form part of both applications.

Appendices to Appendix B:

Appendix 1: ICAEW Regulatory Board Terms of Reference

Appendix 2: Probate Committee Terms of Reference

Appendix 3: Regulatory Board Nomination Committee Terms of Reference

Appendix 4: Panel to Appoint the Chair of the Regulatory Board
Nomination Committee Terms of Reference

Appendix 5: Professional Standards Appointments Committee

Appendix 6: ICAEW Nominating Committee Terms of Reference

Appendix 7: ICAEW Board Terms of Reference

Appendix 8: Senior Staff Appointments Committee Terms of Reference

Appendix 9: ICAEW Council Terms of Reference

Appendix 10: ICAEW Liaison Group Terms of Reference

Appendix 11: Operational Protocol

Appendix 12: A Shared Services Committee Terms of Reference

Appendix 13: ICAEW Governance Handbook chapters 1 and 2