

Consultation: on the proposal to become the regulator of Association of Chartered Certified Accountants (ACCA) firms for the reserved activity of probate

Introduction

1. CILEx Regulation is the independent regulator for Chartered Legal Executives (Fellows), other grades of CILEx membership, CILEx Practitioners and firms. We take a risk based and outcomes focused approach to regulation, by working constructively with our regulated community to ensure that they deliver the best outcomes for clients. We have set clear principles within our Code of Conduct and inform the public of the standards they can expect. We believe this provides a balanced approach.
2. CILEx Regulation awards practice rights, by specialism, in all the reserved and regulated areas and regulates legal practices, referred to as authorised entities. CILEx became a Licensing Authority in 2019.
3. The ACCA is proposing to withdraw from legal services regulation at the end of 2020 and this consultation sets out CILEx Regulation's proposed approach to enable ACCA firms to continue to offer non contentious probate services to their clients.
4. CILEx Regulation will be seeking to make an application on behalf of CILEx as the approved regulator to become the regulator for ACCA firms to offer the reserved activity of probate activities.
5. This consultation seeks your views as to whether
 - it is appropriate for CILEx Regulation to offer this facility to ACCA firms, and their consumers,
 - the proposed approach is appropriate, offering the benefits to the market; and
 - whether the draft rules being adopted provide the necessary regulatory standards and protections.
6. We welcome responses from our regulated community and other stakeholders; including consumers of legal and accountancy services, accountancy firms, other regulators, employers and other interested parties.
7. This consultation will run for **8 weeks**, from 12 August 2020, **closing at 5pm on 7 October 2020**.

Background

8. Since 2015 CILEx Regulation has been able to authorise practitioners in all the reserved activities (except notarial activities) and to authorise law firms (known as a CILEX Authorised Entity). In 2019 CILEx was designated as a Licensing Authority.
9. CILEx has a Code of Conduct comprising nine Principles supported by Outcomes. The Principles set out the required standards of conduct expected of the regulated community including our authorised entities.

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10. Entities are authorised for the specialist area in which their approved managers are authorised. There must be at least one approved manager for each practice area for which the entity is authorised. In determining the authorisation of an entity and carrying out its supervision CILEx Regulation takes a risk-based approach, assessing the risks to the delivery of the Principles and Outcomes in the Code of Conduct.
11. The following list sets out the rules to which an authorised entity is subject
 - CILEx Accounts Rules
 - CILEx Authorisation Rules
 - CILEx Code of Conduct
 - CILEx Regulation Compensation Arrangements Rules
 - CILEx Professional Indemnity Insurance Rules
 - CILEx Minimum Wording
 - CILEx Regulation Licensing Rules
 - CILEx Regulation Transparency Rules
 - CILEx Regulation Enforcement Rules
 - Enforcement Handbook – Fines Policy
12. The ACCA was recognised as an approved regulator for the reserved legal activity of probate on 30 December 2009 by the Legal Services Act 2007 (Approved Regulators) Order 2009 (S.I. 2009/3233) “the ACCA Order”.
13. However, the ACCA did not immediately carry out that function and in 2017 submitted an application to the Legal Services Board to introduce regulatory arrangements for probate activities. This created a framework for the ACCA to be able to authorise individuals to carry on probate activities. It included amendments to the ACCA’s *Additional Practising Regulations for the United Kingdom, Jersey, Guernsey and Dependencies of the Isle of Man* and the introduction of the *Legal Activities Regulations 2018*. This was approved by the Legal Services Board on 17 January 2018.
14. The ACCA have now made the strategic decision that, with a membership of 219,000 fully qualified members and 527,000 students worldwide, they no longer wish to hold their designation as an approved regulator of legal services and believe that a partnership with another approved regulator would be beneficial. This would provide their firms with a route to continue offering probate activities as well as the opportunity to offer a full range of legal services under the regulation of the new approved regulator. This would then offer benefits and flexibility to firms in servicing their clients and encourage the development of new ways to deliver professional services.
15. They entered into discussions with CILEx and CILEx Regulation during 2019 with the intention that their existing probate firms and authorised persons would transfer to regulation by CILEx Regulation on 1 January 2021. ACCA and CILEx Regulation have met with the Legal Services Board in 2020 to discuss the route to achieving this.
16. As at 12 August 2020, there are currently 54 authorised ACCA Accredited Probate firms and 66 authorised individuals.

Approach to regulation of probate activities

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17. In considering our approach to become a regulator of ACCA firms for probate activities, CILEx Regulation was aware that there could be a risk of creating a perceived two-tier system of regulation for firms that wished to carry out probate. We were keen that there was a clear differentiation between the route that an ACCA member and firm pursued in becoming authorised for non-contentious probate to that of an applicant seeking to become a CILEx Authorised Entity, which could become authorised for any of the reserved and regulated activities.
18. We were mindful that the regulation of our probate firms covers all aspects of estate administration, usually the holding of client money, and their supervision for compliance with the Money Laundering Regulations. We have not wanted to create an approach to regulation of ACCA firms that conflicts with our current approach to the authorisation and regulation of firms for all the reserved and regulated legal activities.
19. In addition, ACCA was keen that the arrangement that was put in place avoided regulatory conflict but also allowed their firms to continue to develop professional services for their clients. There was also the consideration that some activities, such as compliance with money laundering regulations, should be carried out by the regulated accountancy services firm and ACCA was keen that there was a clear separation between activities and who was regulating for them.
20. Whilst the ACCA want to leave the regulated legal sector, they do not want their members and firms to be disadvantaged by having their authorisations removed. They did not believe that this would benefit their members and firms or consumers by reducing the choice available.
21. The availability of CILEx ACCA firms improves access to justice, increasing the public's access to advice about their understanding of their legal rights and duties.
22. By continuing to allow ACCA members to access a route to deliver legal services, this will enable them to develop new innovative channels for delivering the wide range of professional services, including accountancy and legal, and therefore improving access to justice and provision of services. This will also offer ACCA members a gateway in to ABS firms now that CILEx is designated as a Licensing Authority.
23. The ACCA have also recognised the importance of creating a pathway for their members to offer legal services. They believe it is important for the development of the professional services market to allow individuals and firms to offer a wider range of complimentary legal services than was possible under their existing designation as an approved regulator. This can be facilitated through the relationship with CILEx.
24. By entering in to an arrangement with CILEx and CILEx Regulation, firms would have the ability to continue to offer probate activities in the same manner as before, as well as having the opportunity to then apply to CILEx Regulation to be authorised for other reserved and regulated legal activities, such as litigation, conveyancing and immigration.

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25. The nature of the relationship between ACCA, CILEx and CILEx Regulation will be covered by a tripartite Memorandum of Understanding and ACCA and CILEx Regulation will have a joint data sharing agreement.

Authorised Persons

26. CILEx Regulation awards practice rights in the reserved and regulated legal activities by specialism. Applicants must demonstrate their competence in their specialist area of practice. There is a competence framework for each reserved and regulated area which sets out the knowledge, skills and experience that applicants must demonstrate.
27. As ACCA authorised individuals, known as an Authorised Legal Activities Individual, are authorised persons, CILEx Regulation would be able to transfer their competence from ACCA without any further assessment. They will be subject to the usual annual CPD requirements with CILEx Regulation.
28. The intention is that the existing qualification route will continue to be made available for ACCA members and non-members in ACCA firms to become authorised individuals. This will require them to successfully complete a course of training and assessment in the reserved legal activity, now to be prescribed by CILEx Regulation, rather than ACCA. We propose to allow the existing probate courses, as set out by ACCA on their website, to continue as the prescribed standards.

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?

Please provide reasons for your response.

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

Please provide reasons for your response.

Scope of regulation of probate activities

29. We are proposing that ACCA Accredited firms will be authorised by CILEx Regulation solely for the reserved activity of non-contentious probate activities and none of the work associated with the administration of an estate.
30. The Legal Services Act 2007, Schedule 2 sets out the definition of probate activities as follows:

Probate activities

6(1) "Probate activities" means preparing any probate papers for the purposes of the law of England and Wales or in relation to any proceedings in England and Wales.

(2) In this paragraph "probate papers" means papers on which to found or oppose—

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- (a) a grant of probate, or
- (b) a grant of letters of administration.

31. We are looking to interpret the Schedule 2 definition in the narrowest sense for this authorisation. Our intention is that the firm will only carry out the work involved in preparing the probate papers. It will not carry out any work connected with the administration of the estate nor hold any client money.
32. We are aware that the legal services market has a number of firms carrying out the unreserved activities linked to estate administration who are not subject to regulation by an approved regulator. In this instance the work that the ACCA accountancy firms carry out will still be subject to regulation and supervision by the ACCA, so the consumer will continue to have the protections available of seeking redress and making a complaint.
33. This will mean that all other work, which is defined as unreserved, can be carried out by the accountancy firm and will be subject to the existing ACCA rules and protections under which their members and firms operate. As the CILEx ACCA firm will not hold client money, then the ACCA accountancy firm will be subject to supervision by the ACCA for compliance with the Money Laundering Regulations.
34. In order to provide total separation between the regulated activities we will expect all probate activities to be carried out by a separate entity to the accountancy activities. We believe that this is the simplest and correct approach to providing clarity to consumers, firms and other regulators.
35. If an ACCA accountancy firm wishes to hold their client money and carry out the full estate administration activities within the CILEx ACCA firm, then they will need to submit an application to become a CILEx Authorised Entity and meet the usual requirements of our firms.
36. By adopting this approach to limiting the activities that can be carried out within the CILEx ACCA firm, then we believe that this provides a clear distinction between them and our CILEx Authorised Entities.

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?

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?

Rules

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37. In addition to maintaining a clear differentiation between the rules that govern CILEx Authorised Entities and the CILEx ACCA firms, we want to ensure that the current ACCA firms are able to continue to operate under the existing arrangements that had previously been agreed by the Legal Services Board.
38. Within the new rules, we are proposing to describe the ACCA Accredited firms as CILEx ACCA firms. If we used the term authorised entity for these firms, then the existing CILEx and CILEx Regulation rules would immediately apply to these firms.
39. We will not be using the term Approved Manager with CILEx ACCA firms because this would also bring these individuals under the existing CILEx and CILEx Regulation rules and requirements. We are proposing to retain the title of Authorised Legal Activities Individual to describe those individuals authorised to carry out probate activities in the CILEx ACCA firm.
40. Our approach has been to create a new CILEx Regulation ACCA Handbook to apply to the CILEx ACCA firms. We have transposed the wording of the existing rules that apply to ACCA Accredited firms from the *ACCA Legal Activities Regulations 2018* and amended these to allow for these firms being regulated by CILEx Regulation. This is set out at **Annex 1**.
41. We have incorporated the principles and outcomes within CILEx Code of Conduct within the handbook so that CILEx ACCA firms and Authorised Legal Activities Individual are operating to the same expectations as to their conduct as our CILEx members, CILEx practitioners and CILEx Authorised Entities.
42. We have maintained the existing requirements for PII and Compensation arrangements that ACCA Accredited firms are expected to comply with, recognising that the majority of risks that these protections are in place to mitigate will remain with the accountancy activities. We will be entering into discussions with the existing providers of PII so they can clearly understand the risks and within which firm that these sit.
43. We will be amending the definitions within the CILEx Regulation Enforcement Rules to allow us to deal with any complaints about CILEx ACCA firms and Authorised Legal Activities Individual. With the limited authorisation that we are providing and information from ACCA, we do not believe that we should be receiving a large number of complaints. How we deal with these complaints will be dealt with under the MoU and data sharing agreements, but the expectation will be that ACCA members and firms will initially be referred to the ACCA before we take any action.
44. As we require our authorised entities to comply with the requirements set out by the Competition and Markets Authority on price and service information, we will be amending the CILEx Regulation Transparency Rules so that they will be extended to CILEx ACCA firms. As the activity that they carry out will be limited, we do not believe that the information they will have to supply will be onerous.
45. We will be engaging with the Office of Professional Body Anti-money laundering Supervisors (OPBAS) to agree the approach to supervision of these firms.

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46. We will be working with ACCA to agree how these rules can be implemented satisfactorily and to address any areas identified that may cause a regulatory conflict.

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

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

Fees

47. In proposing the following fee structure, we have considered the risk posed by the firms due to the restricted reservation that we will be authorising and supervising them for, and the fact that the associated accountancy firm will be being regulated for:

- the unreserved estate administration activities;
- the holding of client money; and
- anti-money laundering compliance.

48. We have also considered the existing ACCA fee structure. There is no fee payable to ACCA to register as an Authorised Legal Activities Individual but the fee for a Firm's Legal Activities Certificate in 2020 is £262 per Authorised Legal Activities Individual (ACCA member and non-ACCA member).

49. The majority of firms operate as sole traders with the remainder primarily two partner firms.

50. We are proposing the following fee structure to be in place for 2021:

- Individual Practising Certificate Fee £100
 - Firm fee £200
- Total £300 per firm minimum

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

Next steps

51. This consultation is open for 8 weeks, from 12 August 2020, closing at 5pm on 7 October 2020.

52. Once the consultation closes, subject to the responses, CILEx Regulation will make a submission to the Legal Services Board for approval to become a regulator for ACCA probate firms.

How to respond

53. This response form has been provided for completion. Please send the response form to CILEx Regulation by the following method:

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- By email to consultations@cilexregulation.org.uk. Please mark your reply for the attention of David Pope, Entity Authorisation and Client Protection Manager.

Summary of 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?

Please provide reasons for your response.

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Please provide reasons for your response.

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