



20 December 2016



Mrs Dawn Reid  
Head of Regulatory Performance and Operations  
The Legal Services Board  
One Kemble Street  
London  
WC2B 4AN

Dear Dawn

**ICAEW's application to regulate further reserved legal activities**

Dear Dawn

Further to our meeting last Tuesday regarding the changes ICAEW is proposing to make to its current application to regulate further reserved legal activities. As discussed, ICAEW is applying to amend the ICAEW Legal Services Regulations (Annex 1 to the application). I have therefore attached the following documents:

- Amended ICAEW Legal Services Regulations (tracked change version)
- Amended ICAEW Legal Services Regulations (clean version)
- Amended ICAEW Legal Services Compensation Scheme Regulations (tracked change version)
- Amended ICAEW Legal Services Compensation Scheme Regulations (clean version)

**1. Amendments to Schedules 1 and 2 of the ICAEW Legal Services Regulations**

For the reasons of quality and risk set out below, we are applying to amend these regulations to effectively restrict ICAEW's ability to authorise individuals to carry out the reserved legal activities of conduct of litigation and rights of audience to qualified lawyers only, such as solicitors or barristers. The regulations will still, however, permit ICAEW to accredit accountancy firms to provide these services albeit through a qualified lawyer.

ICAEW has had discussions with professional legal education providers regarding the development of appropriate courses and assessments that would be required to implement the Qualifications and Authorisation Framework set out in Schedules 1 and 2 of the ICAEW Legal Services Regulations. It is apparent from these discussions, and understandable, that they do not want to undertake development work on the higher risk qualifications for civil and criminal litigation and advocacy until ICAEW is clear what the decision is on its application. This is because training courses for these reserved legal services are more expensive to develop and run than for the lower risk activity of reserved instruments. The commercial risk to them of doing so is too high.

Furthermore, even if ICAEW's application were to be approved, the demand for the qualifications for litigation and advocacy will still remain very uncertain as these courses will be lengthy and costly and firms may well prefer to employ a solicitor or barrister to carry out these

activities rather than train accountants to do so. Again the legal education providers are unwilling to take the commercial risk of developing and running these high risk courses until the demand for them is more certain.

ICAEW is aware that high standards of professional skill and care are important for the administration of justice and the functioning of the courts. It also believes that the educational platform for the effective delivery of legal services is important to ensure both the quality and integrity of service, and protection of the consumer.

ICAEW is also of the view that a variation in the standards across legal regulators of professional skills and care would be inappropriate and therefore, for these reasons, ICAEW feels that it is important that those we regulate undertake the same quality of training and are trained to the same standard as those regulated by the Solicitors Regulation Authority and the Bar Standards Board.

In order to ensure the same quality and standards ICAEW wishes to develop appropriate courses and assessments with a professional legal education provider that is very experienced in developing and delivering the Solicitors Legal Practice Course (LPC) and the Bar Professional Training Course (BPTC). As we are unable in the short term to progress this, for the reasons relating to commercial risk outlined above, until a decision has been made on our application, we have decided to adopt an approach that relies on other bodies' qualifications to give us this assurance until we are in a position to develop our own qualifications to the same quality and standards.

The proposed amendments to the regulations will therefore mean that ICAEW will not need to provide training courses and assessments for the higher risk activities of civil and criminal litigation and advocacy but rather for just the lower risk activity of reserved instruments. A university, experienced in running the LPC and BPTC, has agreed to develop and deliver such courses and assessments and ICAEW will shortly be signing a Memorandum of Understanding relating to these. The changes therefore, not only make commercial sense, but also have the effect of making ICAEW's regulation of conduct of litigation and rights of audience lower risk as such services will be carried out by lawyers qualified by legal regulators other than ICAEW.

Should ICAEW's application be successful, it is our intention to conduct a survey of accountancy firms that have applied for accreditation to deliver litigation and advocacy services to ascertain their demand for training their accountants to deliver these services in order to ascertain the demand for corresponding qualifications. Should it turn out that there is sufficient demand, it is ICAEW's intention to apply to you at an appropriate time in the future to expand ICAEW's Legal Services Regulations to enable us to authorise non-lawyers to carry out these services and to work with a university to develop and deliver appropriate training courses and assessments.

## **2. Amendments to the Legal Services Regulations**

You are of course aware that, as part of ICAEW's application to you to regulate probate, section 69 and section 80 orders were drafted in order to enable ICAEW to send its probate appeals to the First-tier Tribunal (General Regulatory Chamber) FTT and for the FTT to hear them. Whilst these statutory orders have been in force for some time now, ICAEW encountered significant difficulty with HM Courts and Tribunal Services (HMCTS) in finalising the administrative arrangements for sending probate appeals to the FTT. In this regard the required Memorandum of Understanding (MoU) to finalise these arrangements has only recently been agreed and signed. However, whilst negotiating the terms of the MoU with HMCTS and as part of the normal application procedure for our current application HMCTS requested that some amendments be made to ICAEW's Legal Services Regulations to align

them with their own rules relating to appeals and recent legislation. These amendments are set out below.

Regulations 10.10, 10.11, 11.5, 11.7, 12.3, 12.4, 12.5; and guidance notes above regulation 11.5 at the beginning of chapter 12.

In addition to the amendments requested by HMCTS an amendment has also been made to regulation 9.1 in order to clarify that the Legal Services Committee is established under chapter 9 of the Legal Services Regulations; and regulation 12.1 where the reference to "firm" has been deleted to reflect the terminology used in ICAEW's Disciplinary Bye-laws, which were amended in October 2016.

### **3. Amendments to the Legal Services Regulations Compensation Scheme Regulations**

Regulation 3.2 has been amended in order to clarify that the Legal Services Committee will have the ability to make a partial grant if there are funds in the scheme, but not enough to grant the application in full. Grants will be limited to the funds available in the

Regulations 9.1 and 9.2 have also been redrafted in the form of a list and the words "part of the loss" have been inserted for clarity.

I can confirm that these amendments to the ICAEW Legal Services Regulations have been approved by the ICAEW Regulatory Board and ICAEW is therefore applying to the Legal Services Board (LSB) for approval of these amendments and I look forward to hearing from you regarding this in due course.

I can also confirm that we have written to the Lord Chief Justice to advise him of these proposed amendments to Schedules 1 and 2 of the ICAEW Legal Services Regulations as they are changes that are very relevant to the advice he is currently finalising for the LSB on ICAEW's application. A copy of this letter is also attached.

Yours sincerely



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