

Notice – Cancellation of ACCA’s designation as an approved regulator for probate

ACCA hereby gives notice of the submission to the Legal Services Board (**LSB**) of an application under section 45(3) of the Legal Services Act 2007 (**the Act**) for the LSB to make a recommendation to the Lord Chancellor that an order be made cancelling ACCA’s designation as an approved regulator (**AR**) in relation to the reserved legal activity of probate (non-contentious). ACCA is not an AR for any other reserved legal activities.

The application to the LSB was made on 22 October 2021.

In 2019, ACCA reviewed its approach to probate regulation in England and Wales in order to assess how best to support our members in practice and provide the greatest opportunity for our small- and medium-sized practices (**SMP**) who wish to undertake legal services, whilst managing the risks posed by potential changes in the regulatory landscape in this area.

In September 2019 ACCA Council approved:

- ACCA providing a pathway for eligible members to achieve probate (and other reserved legal activities) authorisation from CILEx Regulation (**CRL**)
- and
- ACCA relinquishing its AR status for probate in England and Wales and to ACCA fully exiting legal services regulation.

The approach approved by Council allows ACCA to meet its stated aim to diversify and innovate in relation to new service lines for SMP. By partnering with CRL, ACCA will be able to offer a pathway for eligible practitioners to achieve reserved legal activities authorisation beyond non-contentious probate work and, in turn, support practitioners to diversify their service offerings.

It also serves to provide a cost effective means by which to provide practitioners a pathway to reserved legal activities work while guarding against the risk that the new obligations imposed by the LSB’s revised Internal Governance Rules will detract ACCA from focussing on its core activities.

At the time of the application to the LSB, there were 99 individuals and 78 firms authorised by ACCA to undertake non-contentious probate activities who will be affected by ACCA’s withdrawal from probate regulation and the cancellation of its designation as an AR.

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ACCA has developed transfer arrangements which support the orderly transfer of affected authorised persons to another AR. We believe that the proposed process is straightforward and will enable a smooth and timely transfer for ACCA probate practitioners.

ACCA is committed to ensuring that the transfer arrangements are communicated to all affected authorised persons, and that they are provided with guidance and support to make timely and informed decisions on the options available to them.

On 27 September 2021, all affected authorised persons were advised that their ACCA authorisation for non-contentious probate work will cease on 31 December 2021. They were also advised that, in advance of ACCA's withdrawal from probate, they will be required to choose one of the following three options:

- (1) Authorisation by CRL as a CILEX-ACCA Probate Entity or a CILEx Authorised Entity
- (2) Authorisation by another AR
- (3) Cease carrying out probate activities.

The CRL pathway, recently approved by the LSB, enables ACCA probate practitioners to continue to offer probate as an ancillary activity to their accountancy work under a similar regulatory framework to that currently offered by ACCA. CRL has consented to the transfer and will manage the onboarding process for those affected authorised persons that opt to transfer to them.

However, affected authorised persons have the opportunity to make their own decision as to their future regulator if they wish to continue to offer probate services. There is no requirement for them to choose CRL.

ACCA has not charged a probate fee in 2021. Therefore, there are no amounts held by ACCA which represent amounts paid to it by way of practising fees by the affected authorised persons. Consequently, there are no arrangements to transfer such amounts to another relevant AR.

ACCA intends to withdraw all regulatory arrangements for probate activities, effective 1 January 2022. Therefore, ACCA has also applied for approval of alterations to its regulatory arrangements for probate. In order to give effect to our withdrawal from probate regulation, ACCA will implement changes to the UK annex to the Chartered Certified Accountants' Global Practising Regulations 2003, including the removal of the Legal Activities Regulations 2018, effective 1 January 2022.

In its communications to affected authorised persons ACCA has stressed that they must ensure they are appropriately authorised to undertake probate activities when their

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current authorisation with ACCA ends on 31 December 2021, or cease undertaking probate activities.

Any ACCA member who continues to carry out probate activities, unregulated, after 31 December 2021 will be in breach of ACCA's Bye-laws, regulations and Code of Ethics and Conduct (or for a non-ACCA member, the regulations of their professional accountancy body) and will be subject to regulatory and disciplinary enforcement action for undertaking activities without holding the necessary authority.

The practice of a reserved legal activity, unregulated, may also constitute criminal offences under sections 14-17 of the Act and be subject to criminal prosecution by law enforcement agencies and the relevant prosecuting authority, resulting in imprisonment or a fine. As part of the assessment of evidence in each case, ACCA would consider whether a private prosecution under section 14 of the Act would be an appropriate and proportionate course of action to take.

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