



Probate Regulations

EFFECTIVE FROM 23 FEBRUARY 2017

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1 GENERAL

The Legal Services Act 2007 permits two methods by which a firm may undertake probate work:

- as an authorised firm in which case all of the principals (and shareholders in the case of a company) have to be individually authorised to undertake probate work;
- as a licensed firm if all the principals (and shareholders in the case of a company) are not individually authorised to undertake probate work. Additional requirements then apply.

Authorisation is by an approved regulator, licensing is by a licensing authority and ICAEW is both. Once a firm is authorised or licensed under these regulations it is an 'accredited probate firm' and it has to comply with these regulations. Some regulations may only apply to a licensed firm, such as the requirement to appoint a Head of Finance and Administration and a Head of Legal Practice.

In addition to the regulatory requirements for probate work, a number of important regulatory provisions are applied to estate administration when carried out by a firm conducting probate work. 'Authorised work' for the purposes of these regulations includes estate administration.

As a licensing authority ICAEW has statutory powers to intervene in the business of firms which it has licensed. These powers and the types of default by a licensed firm (such as breaches of licence conditions or insolvency events) which trigger them are set out in schedule 14 of the Act. ICAEW uses similar powers and applies similar principles as an approved regulator in the case of authorised firms.

It is a requirement of the Act that in discharging its regulatory functions, ICAEW, as an approved regulator, must act in a way which is compatible with the regulatory objectives set out in section 1 of the Act, and in the way which it considers most appropriate for the purpose of meeting those objectives.

All individuals who are in charge of, or control the undertaking of, probate work in an accredited probate firm must be individually authorised to do so under the Act. That authorisation may have been granted by ICAEW or another approved regulator.

ICAEW must be given full details of any non-authorised person who holds or is expected to hold a material interest (see Regulation 6.2) in a licensed firm or a firm which applies to be licensed, or of any change in the holding of such an interest. Such a holding is subject to approval by ICAEW which may be granted unconditionally or subject to conditions.

In these regulations, guidance is given to help firms apply the regulations. This is printed in light type and the regulations are in **bold** type with defined terms in ***bold italics***.

1.1 These regulations are made by ICAEW's Council pursuant to Clause 16 of the Supplemental Royal Charter of 1948. They came into force on 14 August 2014 and were amended on 23 February 2017.

1.2 These regulations only apply to the grant of probate or letters of administration in England and Wales.

The definition of probate work, and therefore the work that can be authorised by accreditation under these regulations, consists only of preparing papers to apply for a grant of probate or letters of administration. If a firm is asked to prepare papers to oppose a grant of probate, then the client should be requested to seek advice from a suitably authorised person.

There are different arrangements in Northern Ireland and Scotland (in the latter case probate is known as 'confirmation'). Thus a firm cannot undertake probate (or confirmation) work in Northern Ireland and Scotland unless specifically permitted to do so under the law of those countries.

1.3 These *regulations* apply to *firms seeking accreditation* and to *accredited probate firms authorised or licensed under these regulations*. The regulations also apply to *principals and employees of the firm*. In certain instances the *regulations* continue to apply even if *accreditation* has ceased.

1.4 Any notice or document may be served on *ICAEW* by sending it to:

Professional Conduct Department
ICAEW
Metropolitan House
321 Avebury Boulevard
Milton Keynes
MK9 2FZ

1.5 Any notice, decision, order or other document which needs to be served on a *firm, member, probate affiliate* or other person under these *regulations* will be delivered by hand, or sent by email, fax or post:

- a if it is delivered by hand to the addressee, service will take effect immediately;
- b if sent by email, it will be sent to the most recent email address given by the addressee and service will take effect immediately;
- c if sent by fax, it will be sent to the most recent fax number given by the addressee and service will take effect immediately; or
- d if sent by post, it will be sent to the latest address given by the addressee and service will take effect two *business days* after posting.

DEFINITIONS AND INTERPRETATION

1.6 The words listed below shall have the meanings given:

Accountancy body	<ul style="list-style-type: none">• <i>ICAEW</i>;• Institute of Chartered Accountants of Scotland;• Chartered Accountants Ireland;• Institute of Chartered Accountants in Australia;• New Zealand Institute of Chartered Accountants;• South African Institute of Chartered Accountants;• Institute of Chartered Accountants of Zimbabwe; or• Canadian Institute of Chartered Accountants.
Accreditation (includes accredited, accredit)	The process by which <i>ICAEW</i> authorises or licenses persons to undertake <i>probate work</i> .
Accredited probate firm	A <i>firm accredited</i> under these <i>regulations</i> to conduct <i>probate work</i> .
Act	Legal Services Act 2007.

Appeal Tribunal	The First-tier Tribunal established under the Tribunals, Courts and Enforcement Act 2007.
Approved Regulator	A body designated under Schedule 4 of the <i>Act</i> in respect of one or more <i>reserved legal activities</i>.
Associate	An associate is defined by <i>Regulation 6.3</i>.
Authorised firm	A <i>firm</i> authorised under these <i>regulations</i> to conduct <i>probate work</i>.
Authorised individual	A <i>principal</i> or <i>employee</i> of an <i>accredited probate firm</i> who is designated under section 4 of these <i>regulations</i>.
Authorised person	A person or <i>firm</i> authorised or licensed by <i>ICAEW</i> or another <i>approved regulator</i> in relation to <i>probate work</i>.
Authorised work	<ul style="list-style-type: none"> • Probate work • Estate Administration: Following a grant of probate or letters of administration, collecting in the assets of an estate, settling the liabilities and distributing the remainder in accordance with a will or letters of administration.
Business day	A day when banks are generally open for business (excluding weekends) in England or Wales (as appropriate).
Contact partner	<p>An individual appointed by a <i>firm</i> to:</p> <ul style="list-style-type: none"> • ensure that it has procedures and practices that enable it to comply with its obligations under these regulations; • correspond with <i>ICAEW</i> in relation to the activities governed by these regulations; • give an annual declaration of the firm's compliance with its responsibilities under these regulations in the form from time to time determined by <i>ICAEW</i>; • from time to time supply <i>ICAEW</i> or its agents with information as required; and • ensure that an annual compliance review is undertaken as required under <i>Regulation 3.11</i>. <p>The role of the contact partner is to be responsible for ensuring that the firm complies with these regulations. The contact partner should be of sufficient seniority and influence within the firm to ensure that others will act on their instructions.</p> <p>If one of more of the principals of the firm is an individual, one of those individuals should be the contact partner and it is recommended that they also be an authorised individual.</p> <p>If the firm is a sole practice, the sole practitioner is the contact partner. The Head of Legal Practice is the contact partner in a licensed firm.</p>
Disciplinary Committee	The <i>Disciplinary Committee</i> appointed by <i>ICAEW</i> under the Schedule to its <i>Disciplinary Bye-laws</i>.

Employee	Anyone who carries out work for an <i>accredited probate firm</i>, but excluding a <i>principal</i>, a subcontractor or a consultant.
Firm	A <i>firm</i> includes an individual, a partnership, a limited liability partnership or any other body corporate which is or seeks to be <i>accredited</i> under these <i>regulations</i> to conduct <i>probate work</i>.
Head of Finance and Administration	<p>The individual appointed by a <i>licensed firm</i> who is responsible for taking all reasonable steps to ensure that the <i>firm</i> complies with the requirements in <i>Regulation 3.8</i> (clients' assets) and who is not disqualified under the <i>Act</i> from acting as a <i>Head of Finance and Administration</i> and who must report any breach of those requirements to <i>ICAEW</i> as soon as reasonably practicable.</p> <p>The Head of Finance and Administration (HoFA) should be of sufficient seniority and influence within the firm to ensure that others will act on their instructions. The HoFA should hold an appropriate qualification to enable the discharge of his duties with competence and skill.</p>
Head of Legal Practice	<p>The <i>authorised individual</i> appointed by a <i>licensed firm</i> who is responsible for taking all reasonable steps to ensure that:</p> <ul style="list-style-type: none"> • the <i>licensed firm</i> and its <i>principals</i> and <i>employees</i> comply with their duties under these <i>regulations</i> (other than <i>regulation 3.8</i>); and • non-<i>authorised persons</i> do not do anything which causes or substantially contributes to any breach of these <i>regulations</i> by the <i>firm</i> or by any <i>authorised person</i> who is a <i>principal</i> or <i>employee</i> of the <i>firm</i>; <p>and who is not disqualified under the <i>Act</i> from acting as a <i>Head of Legal Practice</i> and who must report any breach of those requirements to <i>ICAEW</i> as soon as reasonably practicable.</p> <p>The Head of Legal Practice (HoLP) should be of sufficient seniority and influence within the firm to ensure that others will act on their instructions. They should also have sufficient independence to be able to report matters freely if necessary. The HoLP in a licensed firm is also the contact partner.</p>
ICAEW	The Institute of Chartered Accountants in England and Wales.
Investigation Committee	The <i>Investigation Committee</i> appointed by <i>ICAEW</i> under the Schedule to its Disciplinary Bye-laws.
Legal Ombudsman	The body appointed by the Office of Legal Complaints under Part 6 of the <i>Act</i> to assist with resolving complaints.
Legal Services Board	The body established under Part 2 of the <i>Act</i>.
Licensing authority	A body designated under Part 1 of Schedule 10 of the <i>Act</i> in respect of one or more <i>reserved legal activities</i>.

Licensed firm	A <i>firm</i> licensed under these <i>regulations</i> to conduct <i>probate work</i>.
Material interest	A <i>material interest</i> is defined by <i>Regulation 6.2</i>.
Member	A <i>member</i> of <i>ICAEW</i> but not including a <i>probate affiliate</i>.
Principal	<ul style="list-style-type: none"> • an individual in sole practice (if the <i>firm</i> is a sole practice); • a person who is a partner (including both salaried and equity partners) (if the <i>firm</i> is a partnership); • a member of a limited liability partnership (if the <i>firm</i> is a limited liability partnership); • a director (if the <i>firm</i> is a company); • a member of the governing body (if the <i>firm</i> is an unincorporated body, other than a partnership); or • any individual or person who is held out as being a director, partner, member, or member of the governing body. <p>Corporate practices or limited liability partnerships may be principals in a firm.</p>
Probate affiliate	A person granted <i>probate affiliate</i> status by <i>ICAEW</i> for the purpose of these <i>regulations</i>.
Probate Committee	The <i>ICAEW</i> committee responsible for discharging <i>ICAEW</i>'s functions as set out in these <i>regulations</i> or any sub-committee of that committee.
Probate Compensation Scheme	The scheme for the payment of grants made in accordance with the <i>Probate Compensation Scheme</i> regulations.
Probate work	The preparation of papers to apply for a grant of probate or letters of administration.
Register	The <i>register</i> of <i>licensed firms</i> held by <i>ICAEW</i> in accordance with section 87 of the <i>Act</i>.
Regulations	These Probate Regulations, as modified or amended from time to time.
Regulatory penalty	An amount paid by an <i>accredited probate firm</i> by agreement for a breach of these <i>regulations</i> which the <i>accredited probate firm</i> agrees has been committed.
Relevant person	<ul style="list-style-type: none"> • an <i>authorised individual</i>; • a <i>Head of Finance and Administration</i>; • a <i>Head of Legal Practice</i>; or • any other <i>principal</i> or <i>employee</i> of an <i>accredited probate firm</i>.

- Reserved legal activities
- the exercise of a right of audience;
 - the conduct of litigation;
 - reserved instrument activities;
 - probate activities;
 - notarial activities;
 - the administration of oaths;

as defined in section 12(1) and Schedule 2 of the *Act*.

Review Committee The committee appointed under *ICAEW's* bye-laws with responsibility for reviewing decisions made by *ICAEW* as specified in these *regulations*.

- 1.7 Words and expressions have the meanings given by the *Act* and the Interpretation Act 1978 unless defined above. The definitions in these *regulations* take precedence.
- 1.8 In these *regulations* words importing the singular include the plural and vice versa. Words importing the masculine gender include the feminine and neuter. Words importing the neuter gender include both the masculine and feminine genders. Headings do not affect the interpretation of these *regulations*. These *regulations* will be governed by, and interpreted in accordance with, the laws of England and Wales.
- 1.9 Any references to legislation, regulations, requirements, bye-laws, rules or other documents will apply to any re-enactment, re-issue or amendment.

2 ELIGIBILITY, APPLICATION, CONTINUING OBLIGATIONS AND CESSATION

Applications

- 2.1 A *firm* that wishes to be *accredited* under these *regulations* must apply in the manner decided by *ICAEW*, on a prescribed form. The application must include the following:
- a any information that *ICAEW* may require to assess the ability of the *firm* to carry out *authorised work*;
 - b a statement by the *firm* of how its *accreditation* will promote the objective of improving access to justice;
 - c information on the *firm's* arrangements for diversity monitoring in relation to its *principals* and *employees* and existing data derived from diversity monitoring;
 - d a declaration by the *firm* that it agrees to be bound by these *regulations* and will ensure that it complies with them at all times;
 - e a declaration by the *firm* that it will deal with *ICAEW* in an open and cooperative manner and inform *ICAEW* promptly about anything concerning the *firm* as required by these *regulations*;
 - f an acknowledgement by the *firm* that none of *ICAEW*, its officers, staff, members of its Council or committees, their servants or agents can be held liable to the *firm* in damages for any act or omission arising out of the performance of any of their functions under the *Act*, or connected with the granting of authorisation or a licence, the enforcement of these *regulations* or the monitoring of compliance with these *regulations* in any respect, unless the act or omission is shown to have been in bad faith;
 - g an acknowledgement that *ICAEW* may make enquiries of or about the *firm* as *ICAEW* deems necessary;

- h an acknowledgement that *ICAEW* may publish, in such manner as it may determine, information about the *firm's* status under these *regulations*; and
- i an acknowledgement that *ICAEW* may disclose information about the *firm* as set out in *Regulation 2.26*.

Eligibility

2.2 *ICAEW* may authorise a *firm* only if:

- each *principal* in the *firm* is an *authorised person* (or becomes an *authorised person* by decision of *ICAEW* at the same time as granting authorisation to the *firm*) and if another body is a *principal* in the *firm*, non-*authorised persons* are entitled to exercise, or control the exercise of, less than 10% of the voting rights in that other body; and
- in the case of a corporate body (other than a limited liability partnership) each person who has an interest in the *firm* is an *authorised person* (authorised by *ICAEW* under these *regulations* or by another *approved regulator*) and if another body has an interest in the *firm*, non-*authorised persons* are entitled to exercise, or control the exercise of, less than 10% of the voting rights in that other body.

The above sets out who is required to be an authorised person under these regulations. Generally the principals and shareholders in the case of a company must all be authorised persons but certain de-minimis holdings by non-authorised persons are allowed. A firm applying for authorisation may at the same time apply for approval of designation of its principals as authorised individuals as set out in section 4. If a firm is unsure of its eligibility to be authorised or licensed it should contact ICAEW. A person has an interest in a firm if the person holds shares in the body or is entitled to exercise, or control the exercise of, voting rights in the firm.

2.3 If a *firm* does not meet the requirements of *Regulation 2.2 ICAEW* may license the *firm* only if at least one *principal* in the *firm* is:

- a an authorised individual; or
 - b authorised by *ICAEW* under *Regulation 2.2* or authorised by another approved regulator in relation to *probate work*;
- but in either case is not a *licensed firm*.

2.4 Having taken account of the objective of improving access to justice, *ICAEW* may *accredit* a *firm* only if it is satisfied that:

- c the *firm* is fit and proper to be *accredited*;
- d each individual who will undertake, or control the undertaking of, *probate work* on behalf of the *firm* is an *authorised individual* and is fit and proper;
- e the *firm* has appointed a *contact partner* whose name has been given to *ICAEW*;
- f in the case of a *firm* applying to be licensed, the *firm* has appointed a *Head of Finance and Administration* and a *Head of Legal Practice* who have consented to act in these roles and whose appointment has been approved by *ICAEW*;
- g the *firm* has at least one office in England and Wales from which it undertakes *probate work* (unless it is a company or limited liability partnership whose registered office is in England or Wales);
- h each *principal* who is not an *accredited probate firm*, a registered auditor, a DPB-licensed firm, a *member of ICAEW*, a member of the Institute of Chartered Accountants of Scotland, a member of Chartered Accountants Ireland or another *approved regulator* holds affiliate status under these *regulations*, *ICAEW's Audit Regulations*, *ICAEW's DPB Handbook*, *ICAEW's Insolvency Regulations* or *ICAEW's*

regulations governing the use of the description 'Chartered Accountants' and general affiliates;

- i in the case of a *firm* applying to be licensed, any non-*authorised person* who holds a *material interest* in the *firm* is approved by ICAEW under section 6;
- j in the case of a *firm* applying to be licensed, the *firm* has:
 - informed all *principals, employees* and shareholders who are non-*authorised persons* of the duties imposed on them by sections 90 and 176 of the Act; and
 - put in place procedures to prevent such persons from improperly influencing the independence and integrity of *probate work*; and
- a the *firm* has professional indemnity insurance under ICAEW's PII Regulations with a minimum level of indemnity of £500,000 per claim.

Section 28 of the Act requires ICAEW to act in a way which is compatible with the regulatory objectives and which it considers most appropriate for the purpose of meeting those objectives. Under section 1 of the Act the regulatory objectives include the objective of improving access to justice. The application form contains guidance to firms on how their application may promote this objective.

2.5 ICAEW may:

- a grant the application;
- b reject the application;
- c grant the application subject to restrictions or conditions; or
- d postpone consideration of the application.

Under the Act, ICAEW has a period of six months (beginning when all the information required on the application form is received) to make a decision on an application. However, under Regulation 2.5d, ICAEW may decide that it can only properly consider a firm's application after it has additional information about the firm. ICAEW may decide this is best achieved by a visit to the firm and a charge may be made for this. If it is necessary to seek additional information, ICAEW may, before the expiry of six months, issue an extension notice to the applicant extending the period of time taken to reach a decision to nine months. The extension notice must set out the reasons for the extension.

If ICAEW rejects or grants the application subject to restrictions or conditions, it must explain in writing to the applicant the reasons for its decision. Decisions will come into effect as set out in section 10.

A firm can apply for a review of a decision to reject accreditation or to grant it subject to restrictions or conditions. Details of the review process are in section 11.

2.6 ICAEW may at any time vary or end a restriction or condition made under Regulation 2.5.

Continuing obligations

2.7 An accredited probate firm and its principals and employees must at all times:

- a comply with these *regulations*, with any condition of the *firm's accreditation* and with any other relevant regulatory arrangements (and be able to satisfy ICAEW as to such compliance on request);
- b not do or permit anything which causes or substantially contributes to any breach of these *regulations* by the *firm* or by any *authorised individual* who is a *principal* or *employee* of the *firm*;
- c comply with ICAEW's PII Regulations;

- d deal with *ICAEW* in an open and cooperative manner;
- e if an *authorised firm*, have a *contact partner* (in the case of a sole practitioner, that person will be the *contact partner*);
- f (if a *licensed firm*) have a *Head of Legal Practice* who is also the *contact partner*;
- g (if a *licensed firm*) have a *Head of Finance and Administration*;
- h ensure that each individual who undertakes, or controls the undertaking of, *probate work* on behalf of the *firm* is an *authorised individual*;
- i have at least one office in England and Wales from which the *firm* undertakes *probate work* (unless it is a company or limited liability partnership whose registered office is in England or Wales);
- j inform *ICAEW* as soon as practicable but not later than 10 *business days* after any change to the:
 - i *accredited probate firm's* registered address;
 - ii name or trading names of the *accredited probate firm*;
 - iii address(es) of the *accredited probate firm's* offices;
 - iv *accredited probate firm's principals*;
 - v name or principal business address of any of the *accredited probate firm's principals*;
 - vi name of the *contact partner*;
 - vii name of the *Head of Finance and Administration* who must be approved in that capacity by *ICAEW*;
 - viii name of the *Head of Legal Practice* who must be approved in that capacity by *ICAEW*; or
 - ix in the case of a body corporate (but excluding a limited liability partnership):
 - the name or address of any shareholder or anyone with any interest in the shares; and
 - the number of shares held by a shareholder or in the number of shares in which anyone has an interest.
- k inform *ICAEW* as soon as practicable but not later than 10 *business days* after any event affecting the *firm's* eligibility to be *accredited*;
- l in the case of a *licensed firm*, inform *ICAEW* as soon as practicable but not later than 10 *business days* after any non-*authorised person* acquires or ceases to hold, or increases or decreases a holding of, any interest in the *firm* which, either before or after the change, qualifies as a *material interest*;
- m pay any of the charges required by *ICAEW* as set out in *Regulation 2.14, 2.15 and 2.16*. Such charges may be levied at any time, including after the termination of *accreditation* provided they relate to a period before the date of termination;
- n respond, when required, to enquiries made by *ICAEW* (whether by writing, visiting the *accredited probate firm's* offices or by any other method) about the *firm's* application or its activities as an *accredited probate firm*;
- o arrange for the provision of any information about the *firm* or its clients (and to allow access to the *firm's* systems and personnel) that *ICAEW* may request about the activities as an *accredited probate firm*, whether that information is held by:
 - i the *accredited probate firm*;
 - ii any *principal* or *employee* (or former *principal* or former *employee*) of the *accredited probate firm*;

- iii **any non-*authorised person* who holds shares in the *accredited probate firm*, or is entitled to exercise, or control the exercise of, voting rights in the *accredited probate firm*.**
- iv **any non-*authorised person* who is entitled to exercise, or control the exercise of, at least 10% of the voting rights in 'A', where A is a *principal* of the *accredited probate firm* or holds shares in the *accredited probate firm*, or is entitled to exercise, or control the exercise of, voting rights in the *accredited probate firm*;**
- p **provide *ICAEW* with a periodic return in relation to its activities as an *accredited probate firm*;**
- q **subject itself and all its *principals* to any monitoring, inspection or review process specified by *ICAEW*, including its Practice Assurance scheme;**
- r **send any notice or other document to be served on *ICAEW* in the manner set out in *Regulation 1.4*, or as last notified to the *accredited probate firm*; and**
- s **monitor the diversity of the *accredited probate firm's principals* and *employees*, and publish the findings of the monitoring, in the manner and format prescribed by *ICAEW* from time to time.**

2.8 An *accredited probate firm* may not have as a *principal* or *employee* a person who is disqualified pursuant to section 99 of the *Act* from being a *principal* or *employee* of a body licensed under Part 5 of the *Act*.

As is reflected in Regulation 5.5, the Legal Services Board maintains a list of persons who have been disqualified from working in licensed firms by the approved regulators under section 99 of the *Act*. Firms are advised to refer to this list, which can be accessed on the LSB's website, before submitting their application for accreditation.

2.9 If an *accredited probate firm* ceases to have any *principal* or *employee* who is an *authorised individual* the *firm* will immediately cease to undertake *probate work* until it has notified *ICAEW* of the name of another *principal* or *employee* who meets the requirements of section 4.

Professional Indemnity Insurance and compensation

2.10 An *accredited probate firm* shall only carry out *authorised work* if it has professional indemnity insurance under *ICAEW's* PII Regulations with a minimum level of indemnity of £500,000 per claim.

If a firm is conducting authorised work and the value of the estate is likely to exceed the level of the firm's own PII, firms must notify their clients in writing at the beginning of the engagement that their PII is capped and the level of cover.

2.11 An *accredited probate firm* or *firm* that was previously *accredited* must comply with the regulations of *ICAEW's Probate Compensation Scheme*.

Modification

2.12 An *accredited probate firm* that wishes to modify the terms of its *accreditation* must apply in the manner decided by *ICAEW*. The application must include the following:

- a **the terms of the proposed modification;**
- b **the reasons for proposing the modification; and**
- c **any information that *ICAEW* may require in connection with the application.**

2.13 *ICAEW* may:

- a **modify the *accreditation* in the terms of the application;**
- b **modify the *accreditation* in such other terms as it considers appropriate;**
- c **reject the application; or**

d postpone consideration of the application.

If ICAEW rejects the application for modification, it will inform the accredited probate firm of its reasons in writing within 10 business days. A firm can apply for a review of a decision to reject modification or to grant it subject to restrictions or conditions. Details of the review process are in section 11. A charge may be made for dealing with such an application.

Fees

2.14 An accredited probate firm must pay such registration fees (to include any costs that ICAEW is required or has agreed to pay to any other person or body exercising a regulatory or supervisory role in relation to it) as ICAEW determines, at the times and at the rates set by it. The first registration fee is due when a firm applies to be accredited under these regulations to conduct probate work. An application fee is also payable with this first fee.

If a firm's application is not accepted, the first registration fee will be refunded.

2.15 ICAEW may charge a firm or an accredited probate firm a fee if ICAEW has performed additional work. The Probate Committee will decide how much the fee will be.

Additional work may be performed, for example in:

- obtaining information for or about the firm or accredited probate firm;
- collecting any charges due under these regulations;
- responding to enquiries or complaints regarding the accredited probate firm;
- reviewing the continuation of the firm's accreditation;
- visiting the accredited probate firm where ICAEW has had to make a second or subsequent visit to the accredited probate firm as a result of an earlier visit; or
- considering an application for modification under Regulations 2.12 and 2.13.

2.16 An accredited probate firm must pay any levy for ICAEW's Probate Compensation Scheme (whether a periodic contribution or special levy) as ICAEW may decide from time to time. This includes levies raised after the firm's accreditation has ceased but excludes levies relating to claims in respect of services provided by any firm wholly after the date of termination of the firm's accreditation.

2.17 If an accredited probate firm has not paid any amounts due under Regulations 2.14, 2.15 or 2.16 within 60 days of the invoice date, ICAEW may withdraw its accreditation.

2.18 Any amounts unpaid under Regulations 2.14, 2.15 or 2.16 may be recovered as a debt to ICAEW.

Dispensations

2.19 The accredited probate firm must inform ICAEW in writing within 10 business days of a situation arising that may indicate that the accredited probate firm cannot, or expects not to be able to, comply with any of these regulations. The notification must state what has happened and the action that the accredited probate firm proposes to take.

2.20 ICAEW may grant the accredited probate firm a dispensation, of no more than 90 days, from the requirement to comply with a regulation where, in response to a written request, it considers it reasonable to do so having regard to the public interest and the interests of any client.

2.21 If ICAEW rejects the application for a dispensation, it will inform the accredited probate firm of its reasons in writing within 10 business days. The accredited probate

***firm* will then be entitled to apply for a review of the decision in accordance with the procedures set out in section 11.**

It is not expected that dispensations will be readily granted and any firm applying for a dispensation must clearly state why the dispensation is needed and what it is doing to remedy the situation.

Cessation of accreditation

2.22 A firm will cease to be an accredited probate firm if:

- a ICAEW accepts an application from the *firm* to cancel its accreditation;**
- b the *firm* becomes licensed by another *licensing authority*;**
- c the *firm* ceases to exist; or**
- d ICAEW withdraws accreditation under regulation 10.3.**

If a firm's accreditation is to be withdrawn, the firm may ask for a review of the decision under the procedures in section 11. Withdrawal at the firm's request, because the firm no longer exists or it becomes licensed by another licensing authority, cannot lead to a review. If a firm which is no longer accredited wishes to apply again it can do so in the normal manner.

2.23 If a firm is no longer an accredited probate firm:

- a it must still respond to enquiries (made in writing or by visiting a *firm's* office or offices) from ICAEW in connection with any circumstance that relates to these *regulations* during the time that the *firm* was *accredited* and must co-operate with the work of the *Legal Ombudsman*, including the provision of papers and the payment of any remedies ordered;**
- b disciplinary action (including a *regulatory penalty*) may still be taken for:**
 - i. any failure to comply with these *regulations* during the time it was *accredited*;**
 - ii. any failure to comply with any *regulation* continuing to have effect notwithstanding that *accreditation* has ceased;**
 - iii. any failure to keep confidential any information received in the course of *authorised work*.**

2.24 ICAEW's right to recover any amounts due from a *firm* under these *regulations* does not end when a *firm* is no longer *accredited*.

The effect of Regulation 2.23 is that a firm cannot escape disciplinary action by applying to have its accreditation withdrawn. If, in the process of withdrawing accreditation, ICAEW places a condition on a firm and that condition is broken then disciplinary action can be taken. There is a continuing obligation to deal with ICAEW's enquiries and requests for information under Regulation 2.23. Finally, under Regulation 2.24, applying to have accreditation withdrawn does not remove the firm's obligation to pay outstanding fees.

Regulatory conflicts

2.25 If an *accredited probate firm* is of the view that any other regulatory requirement to which it or an *authorised individual* is subject, including the requirements of another *approved regulator*, may cause it to cease complying with these *regulations*, it must inform ICAEW within 10 *business days* of becoming aware of the conflict.

Firms should note that section 176 of the Act requires individuals conducting probate work to comply with the regulatory arrangements of the approved regulator by whom they are regulated. For example, in the case of a solicitor working within an accredited probate firm this will be the Solicitors Regulation Authority (SRA).

2.26 ICAEW reserves the right to pass information (directly or indirectly) about an *accredited probate firm* to any ICAEW committee or person or body undertaking

regulatory, disciplinary, redress or law enforcement responsibilities for the purpose of assisting that person or body to undertake those responsibilities or as otherwise required or allowed by law.

3 CONDUCT OF AUTHORISED WORK

- 3.1 An accredited probate firm must act in accordance with the fundamental principles set out in the Code of Ethics issued by ICAEW's Council and must make arrangements so that it, its *principals* and *employees* comply with these *regulations* and the professional principles set out in the *Act* to:**
- a act with independence and integrity;**
 - b maintain proper standards of work;**
 - c act in the best interests of their clients; and**
 - d keep the affairs of clients confidential.**

Firms of different sizes and with different types of clients will adopt different procedures to comply with these regulations and to act in accordance with the fundamental principles set out in the Code of Ethics. However, all firms will be aiming to provide a high quality and cost effective service, which complies with these regulations. For most firms this means having procedures for doing authorised work, and checks to make sure that the procedures are followed.

- 3.2 An accredited probate firm shall only carry out *authorised work* which it is competent to perform.**
- 3.3 An accredited probate firm must make sure that only *authorised individuals* undertake, or control the undertaking of, *probate work* on behalf of the *firm*.**
- 3.4 An accredited probate firm must make sure that all *principals* and *employees* undertaking *authorised work* are, and continue to be, competent to carry out the *authorised work* for which they are responsible.**

The above places the responsibility on the firm to ensure that its principals and employees who undertake authorised work are suitably competent in doing this work and are up to date with current developments.

- 3.5 An accredited probate firm must make arrangements to prevent anyone who is not an *authorised individual* in the *firm*, or working under the supervision of that person, from having any influence which would be likely to affect the independence or integrity of *probate work*.**

These arrangements need to include informing new principals, employees or shareholders who are non-authorised persons of the duties imposed on them by sections 90 and 176 of the Act.

- 3.6 An accredited probate firm shall ensure that it is in full agreement with its clients as to the nature, scope and terms of the *authorised work* which is or may be provided and that it retains evidence of this agreement.**

The best way to obtain and record this agreement is by using an engagement letter. This could also deal with a firm's obligations under section 240 of the Code of Ethics to notify clients of the basis for charging fees. It could draw the client's attention to the arrangements for continuing the provision of authorised work (see Regulation 3.12) and the complaints procedures established under section 7.

As a matter of best practice and in order to reduce the likelihood of future confusion and complaints, firms should also outline clearly for clients at the beginning of the engagement what is likely to occur and the nature and scope of the work that will be carried out, as well as the costs involved. They should also provide information to enable their clients actively to manage their costs, including being

prepared to explain to clients aspects of their work as it progresses and provide them with revised choices and costs estimates if the original estimates are likely to be exceeded.

The client should not be put under pressure by the firm to accept terms of engagement that may not be in accordance with their wishes.

3.7 The accredited probate firm shall ensure that clients are advised in writing of the compensation arrangements at the beginning of the engagement and the time scales for making applications to the *Probate Compensation Scheme*.

It is recommended that firms use the following paragraph:

'In the unlikely event that we cannot meet our liabilities to you, you may be able to seek a grant from ICAEW's Probate Compensation Scheme. Generally, applications for a grant must be made to ICAEW within 12 months of the time you became aware, or reasonably ought to have become aware, of the loss. Further information about the scheme and the circumstances in which grants may be made is available on ICAEW's website: icaew.com/probate.'

3.8 If an accredited probate firm receives any property in connection with authorised work, details of the property received should be recorded. The firm should take all reasonable steps to ensure that such property is kept safely. Where the property is money this should be dealt with in accordance with ICAEW's clients' money regulations, except that monies received in connection with authorised work must be kept separate from other clients' monies.

3.9 Any property held by an accredited probate firm must only be released on the client's written instructions and a receipt obtained.

Firms should consider carefully whether to hold property in connection with authorised work. It is often the case that the value of such property may be unclear but to safeguard it properly a firm should check that it has appropriate insurance cover. A receipt should be given when any property is received and transferred to a third party.

3.10 An accredited probate firm shall ensure that it has appropriate records of authorised work undertaken on behalf of clients.

Records should evidence the work undertaken on behalf of clients under these regulations, plus any specific instructions from the client. The records do not have to be on paper but could be held on microfilm or on computers. Whatever method of storage is used, the firm must keep a mechanism for gaining access to those records.

It is likely that ICAEW will only be satisfied if the firm keeps records relating to work performed under these requirements for at least 6 years. Firms should bear in mind that some legislation requires records to be retained for longer.

3.11 An accredited probate firm must:

- a confirm on request that it meets the requirements of these regulations and supply such evidence as ICAEW may require to support such confirmation; and**
- b ensure that it conducts a review, at least annually, to consider whether systems it has maintained have been adequate to enable it to:**
 - i comply with these regulations and to confirm its compliance with these regulations when requested by ICAEW; and**
 - ii prepare any return required under Regulation 2.7p.**

The annual compliance review checks whether a firm has complied with these regulations.

3.12 If an *accredited probate firm* ceases to undertake *authorised work* then there must be arrangements in place to protect the interests of those clients for whom it is undertaking such work.

Arrangements must be in place in case a firm ceases to undertake authorised work. These arrangements are to protect the interests of clients and the firm may need to make some arrangements on a contingency basis.

Where a firm is ceasing to conduct authorised work, an orderly wind down or transfer of work to an identified successor firm may be arranged. However, particularly where the firm is a sole practitioner, additional measures will need to be in place to protect the interest of clients in the event of the death or incapacity of the practitioner. This may simply be an arrangement for another person to access the firm's records and then make arrangements for the authorised work to be transferred to another probate practitioner.

The firm should provide details of these arrangements within an engagement letter or similar. A suggested wording is:

'If, for any reason, I am unable to run my practice, I have made arrangements for the completion of any unfinished probate or estate administration work to clients. [Add details of the person that the client can contact.]'

4 AUTHORISED INDIVIDUALS, HEADS OF FINANCE AND ADMINISTRATION AND HEADS OF LEGAL PRACTICE

All individuals who undertake, or control the undertaking of, probate work on behalf of an accredited probate firm must be individually authorised to do so under the Act by ICAEW or another approved regulator.

In an authorised firm, all the principals will need to be authorised persons. A sole practitioner must be an authorised individual and the firm's contact partner. In other authorised firms it is recommended that one of the principals be the contact partner.

A licensed firm must appoint a Head of Finance and Administration and Head of Legal Practice who have specific responsibilities and important duties as set out in Regulation 1.6. The Head of Legal Practice must be an authorised individual and the firm's contact partner.

In all firms (including sole practices) the contact partner can designate appropriately qualified principals or employees as authorised individuals as set out in the following regulations.

Authorisation and withdrawal of authorisation

4.1 Subject to *Regulation 4.4* the *contact partner* (or the person who is intended to be the *contact partner* upon accreditation) may designate as an *authorised individual* any of the *accredited probate firm's principals* or *employees* (or any of the *principals* or *employees* of a firm applying for accreditation) who:

- a is a member of an *accountancy body* and has provided evidence to *ICAEW* of attendance at a course and assessment, which covered at least the following subjects:**
 - a general introduction to the *Act* as it applies to *probate work*;
 - a general introduction to the law of property, equity and trusts;
 - the need for a grant and its effect;

- the types of grant – probate, letters of administration;
- who can apply for probate / letters of administration;
- consideration of the validity, format and content of wills;
- intestacy provisions;
- obtaining information about the assets and liabilities of the estate and their valuation;
- finalising of inheritance tax, corrective accounts and obtaining a clearance certificate from HM Revenue and Customs;
- the completion of papers for an application for a grant;
- the completion of the oath and the filing of papers; and
- the administration of the estate;

b holds a qualification issued or recognised by an *approved regulator* (other than *ICAEW*) that entitles the individual to undertake *probate work*; or

c is otherwise qualified to undertake *probate work* so as to satisfy *ICAEW* that it should approve his designation as an *authorised individual*.

Only principals and employees of a firm are eligible to become ‘authorised individuals’, not subcontractors or consultants.

There are no prescribed courses for the purpose of Regulation 4.1a but the firm or member must show that the course covered the above topics. Courses can include those where the learning is computer based ‘e-learning’, including training delivered over the internet.

The learning outcomes of the course must be assessed and the method of assessment can include objective testing. The pass mark for an assessment must be no less than 50%.

As the course outline set out in Regulation 4.1a builds on the existing qualifications and skills of a chartered accountant, only members of the accountancy bodies as defined in Regulation 1.6 may be eligible to become accredited for probate through this route.

Applications in respect of individuals under Regulation 4.1c will be decided on a case by case basis, having regard to the sufficiency of the individual’s qualification to undertake probate work.

4.2 Subject to *Regulation 4.4* and with the agreement of the individual, a *licensed firm* must designate an *authorised individual* to be the *Head of Legal Practice*.

4.3 Subject to *Regulation 4.4* and with the agreement of the individual, a *licensed firm* must designate an individual to be the *Head of Finance and Administration*.

4.4 Any designation in accordance with *Regulation 4.1*, *4.2* or *4.3* shall not be effective until an application has been made to *ICAEW* in a form specified by it and the application has been approved and this may be approved with conditions or restrictions.

Where a firm wishes to be accredited, and any principals or employees are not authorised individuals, the applications by the firm for accreditation and for approval of designation of authorised individuals should be made (and will be dealt with) simultaneously.

4.5 *ICAEW* may only approve a person’s status as an *authorised individual*, *Head of Legal Practice* or *Head of Finance and Administration*, if it is satisfied that that individual is a fit and proper person.

4.6 *ICAEW* may at any time vary or end a restriction or condition made under *Regulation 4.4*.

Cessation

4.7 **Authorised individual status will cease if:**

- a the *firm* in which the individual is an *authorised individual* ceases to be an *accredited probate firm*;
- b the individual ceases to be a *principal* or *employee* in the *accredited probate firm* to which the grant of *authorised individual* status related;
- c an event occurs which under *ICAEW's* Charter, bye-laws or other regulations the individual would cease to be a *member* or an affiliate;
- d the *contact partner* notifies *ICAEW* that the individual is no longer an *authorised individual*; or
- e *ICAEW* withdraws *authorised individual* status.

Firms are reminded to inform *ICAEW* of any changes to the authorised individuals of the firm.

4.8 **Authorised individual status will not cease under Regulation 4.7a or 4.7b if:**

- a the *accredited probate firm* in which the *authorised individual* is a *principal* or *employee* merges with or is acquired by another *accredited probate firm*; or
 - b the *authorised individual* leaves the *accredited probate firm* in which he is a *principal* or *employee* and immediately becomes a *principal* or *employee* in another *accredited probate firm*;
- provided that *ICAEW* is informed within 10 *business days* of the event. Otherwise, disciplinary action may be taken and *authorised individual* status withdrawn.

4.9 **Status as a Head of Legal Practice or a Head of Finance and Administration will cease if:**

- a the *firm* to which the status relates ceases to be an *accredited probate firm*;
- b the individual ceases to be a *principal* or *employee* in the *accredited probate firm* to which the status relates;
- c an event occurs which under *ICAEW's* Charter, bye-laws or other regulations the individual would cease to be a *member* or an affiliate;
- d the *firm* or individual notifies *ICAEW* that the individual no longer consents to hold that status; or
- e *ICAEW* disqualifies the person from holding that status under *Regulation 5.1*.

4.10 **If an individual is no longer an authorised individual, a Head of Finance and Administration or a Head of Legal Practice disciplinary action under section 12 (including the imposition of a regulatory penalty) may still be taken for any failure to comply with these regulations.**

Decisions under this section will come into effect as set out in section 10. The person may request a review (with subsequent right of appeal) under section 11.

Section 12 applies *ICAEW's* disciplinary arrangements to breaches of these regulations by an authorised individual, a Head of Finance and Administration or a Head of Legal Practice. Regulation 4.10 provides that disciplinary action may be taken after a person has ceased to hold this status.

5 DISQUALIFICATION

The following regulations set out the circumstances in which a person may be disqualified under section 99 of the Act from acting as a Head of Legal Practice or Head of Finance and Administration, or from being a principal or an employee of any licensed firm. This is liable to occur in specific situations identified in the Act as detailed below.

- 5.1** If both of the conditions set out in *Regulation 5.2* and *5.3* are satisfied, *ICAEW* may disqualify a person from:
- a** acting as the *Head of Legal Practice* of any *licensed firm*;
 - b** acting as the *Head of Finance and Administration* of any *licensed firm*;
 - c** being a *principal* of any *licensed firm*; or
 - d** being an *employee* of any *licensed firm*.
- 5.2** The first condition referred to in *Regulation 5.1* is that the person, intentionally or through neglect:
- a** has breached a duty to which the person is subject:
 - as a *Head of Legal Practice* by section 91 of the *Act*;
 - as the *Head of Finance and Administration* by section 92 of the *Act*;
 - as a regulated person by section 176 of the *Act* (within the meaning of that section);or
 - as a *non-authorized person* by section 90 of the *Act*, or
 - b** has caused, or substantially contributed to, a significant breach of the *licensed firm's accreditation*.
- 5.3** The second condition referred to in *Regulation 5.1* is that *ICAEW* is satisfied that it is undesirable for the person to engage in the activity or activities referred to in *Regulation 5.1*.
- 5.4** Upon the application of any person so disqualified under *Regulation 5.1*, *ICAEW* may, if the second condition referred to in *Regulation 5.3* is no longer satisfied, decide that a person's disqualification shall cease to be in force on a date specified in the decision.
- 5.5** *ICAEW* will notify the *Legal Services Board* within 7 days of any decision under *Regulation 5.1* that a person should be disqualified, of the results of any review of such a decision under *Regulation 11.3* and of any decision under *Regulation 5.4* that a person's disqualification should cease to be in force.

If *ICAEW* disqualifies a person as set out above, the decision will come into effect as set out in *Regulation 10.10*. The person may request a review (with subsequent right of appeal) under section 11.

6 OWNERSHIP OF LICENSED FIRMS

This section only applies to licensed firms.

The following regulations set out the requirements where any non-authorized person holds or proposes to hold a material interest in a licensed firm.

Firms applying to be licensed must provide full details of any non-authorized person who holds or is expected to hold a material interest, even if it becomes aware of this after submitting the application.

Licensed firms must also inform *ICAEW* if any non-authorized person acquires or is expected to acquire a material interest, or if there is any change in the extent to which any interest in the firm is held by a non-authorized person. *ICAEW* will need to approve any non-authorized persons holding or intending to hold a material interest, and changes to the firm's ownership structure may affect its eligibility to be licensed.

ICAEW will decide whether to grant approval of the holding under this section. Approval may be granted unconditionally or subject to conditions as set out in these regulations.

If ICAEW objects to a holding or decides to permit it subject to conditions, an applicant or the non-authorised person may request a review (with subsequent right of appeal) under section 11.

As set out in Regulation 6.2 there are different kinds of material interest. If ICAEW has approved a non-authorised person to hold a specific kind of material interest and that person then acquires a different kind of material interest, this needs to be approved as set out above. No approval is needed if an existing material interest is increased or decreased but notification under Regulation 2.71 is required.

6.1 A non-authorised person may not hold a material interest in a licensed firm without a grant of approval by ICAEW.

6.2 A person holds a material interest in a body (B) if the person:

- holds at least 10% of the shares in B;
- is able to exercise significant influence over B's management by virtue of the person's shareholding in B;
- holds at least 10% of the shares in a parent undertaking (P) of B;
- is able to exercise significant influence over P's management by virtue of the person's shareholding in P;
- is entitled to exercise, or control the exercise of, voting power in B which, if it consists of voting rights, constitutes at least 10% of the voting rights in B;
- is able to exercise significant influence over B's management by virtue of the person's entitlement to exercise, or control the exercise of, voting rights in B;
- is entitled to exercise, or control the exercise of, voting power in P which, if it consists of voting rights, constitutes at least 10% of the voting rights in P; or
- is able to exercise significant influence over P's management by virtue of the person's entitlement to exercise, or control the exercise of, voting rights in P.

Regulation 6.2 sets out the different kinds of material interest that require ICAEW's approval.

6.3 For the purposes of this section, the interest held by a person in a firm will consist of the total of the interest held by the person and the interest held by any of his associates, and a person's associate is defined as:

- a the person's spouse or civil partner;
- b the person's child or stepchild if aged under 18;
- c the trustee of any settlement under which the person has a life interest in possession;
- d an undertaking of which the person is a director;
- e any employee of the person;
- f any partner in a firm (other than the *licensed firm*) of which the person is a partner;
- g if the person is an undertaking, any director or subsidiary undertaking or any director or employee of such subsidiary undertaking;
- h any person with whom the person has an agreement or arrangement regarding the acquisition, holding or disposal of any share or interest in the shareholding or voting rights referred to in *Regulation 6.2*; or
- i any person with whom the person has an agreement or arrangement to act together in exercising their voting power in relation to the shareholding or voting rights referred to in *Regulation 6.2*.

Acquisition of a material interest before a firm is licensed

6.4 A firm which applies to ICAEW to become a licensed firm must:

- a identify in the application any non-*authorised person* who holds, or is expected when the *firm* has been licensed to hold, an interest to which Regulation 6.1 applies;**
- b identify in the application the kind of interest which is so held or expected to be held;**
- c in any such case, inform the non-*authorised person* that ICAEW may require the person to provide ICAEW with documents and information and that failure to comply with such a requirement is a criminal offence; and**
- d inform ICAEW of any change in the identity of such non-*authorised person* or the kind of relevant interest so held or expected to be held occurring after the application but before the *firm* is licensed, such information to be given in writing within seven days of the occurrence of such change or, if later, the day on which the *firm* becomes aware of such change.**

Firms must make any non-*authorised person* aware of the importance of the requirement to provide ICAEW with documents and information and ensure that the person understands that failure to comply would make them guilty of a criminal offence under paragraph 14 of schedule 13 to the Act, which is punishable by a fine and/or imprisonment.

An applicant who fails to comply with Regulation 6.4c is also guilty of an offence under paragraph 13 of schedule 13 to the Act, which is punishable by a fine.

6.5 ICAEW will not license the *firm* unless it grants approval to the holding of the non-*authorised person* either unconditionally or subject to conditions.

6.6 In deciding whether to grant approval to the holding of the non-*authorised person*, ICAEW may require the person to provide it with any documents or information and will have regard to all relevant circumstances including:

- a the probity and financial position of the person and any person listed in Regulation 6.3;**
- b whether the person and any person listed in *Regulation 6.3* has been disqualified (by ICAEW under section 5 of these *regulations* or by any other *licensing authority*) from acting as a Head of Legal Practice, a Head of Finance and Administration, a principal or an employee of any licensed body; and**
- c whether the person or any person listed in *Regulation 6.3* has been named in a list maintained by the Legal Services Board of persons in respect of whom a *licensing authority* has objected to or imposed conditions on the holding of a *material interest*, or of persons who acquire a holding of a *material interest* exceeding a limit specified in the licensing rules of any *licensing authority*.**

In determining whether an applicant (together with their associates) is fit and proper, ICAEW will have regard to whether they have previously been disqualified under section 99 of the Act, and whether any other licensing authority has previously objected to, or imposed a condition on, their holding of a material (or other restricted) interest in a licensed body.

6.7 ICAEW may grant approval to the holding of the non-*authorised person* unconditionally if it is satisfied that:

- a the person's holding of the *material interest* does not compromise the regulatory objectives set out in section 1 of the *Act*;**

- b the person's holding of the *material interest* does not compromise compliance by *authorised persons* or the *principals* or *employees* of the *firm* with these *regulations* or with any of *ICAEW's* regulatory arrangements; and
- c the person is a fit and proper person to hold the *material interest*.

6.8 If *ICAEW* is not satisfied as required by *Regulation 6.7* it may:

- a grant approval to the holding of the non-*authorised person* subject to conditions if it is satisfied that compliance with the conditions makes this appropriate; or
- b object to the holding.

6.9 Before deciding either to grant approval to the holding of the non-*authorised person* subject to conditions or to object to the holding, *ICAEW* will:

- a give written notice of the proposed objection or conditions, with reasons for it, to the applicant for the licence and to the non-*authorised person*, explaining the nature of any proposed conditions and stating that representations may be made to *ICAEW* within 28 days;
- b consider any representations if made within the time specified by paragraph (a) above; and
- c notify the applicant for the licence and the non-*authorised person* as soon as reasonably practicable of any objection or any conditions imposed, with reasons.

In all such cases the notice will explain the effect of *ICAEW's* enforcement powers under Part 5 of Schedule 13 of the Act.

Acquisition of material interest after issue of licence

These regulations impose duties on non-*authorised persons* who acquire or propose to acquire a material interest in a firm which is already licensed. A failure, with knowledge of the relevant facts, to comply with any of these duties to notify is a criminal offence punishable with a fine.

Licensed firms should ensure that any non-*authorised person* who acquires or proposes to acquire a material interest in the firm is aware of the obligation to provide such documents or information as *ICAEW* may require. Failure to comply with this obligation is a criminal offence punishable by a fine and/or imprisonment.

6.10 If a non-*authorised person* who proposes to take a step which would result in his acquiring a *material interest* in a *licensed firm* or, if he already has any *material interest* in the *firm*, an additional kind of *material interest* in the *firm*, then he must:

- a give written notification of the proposal to the *licensed firm* and to *ICAEW*; and
- b must not take the proposed step unless *ICAEW* has granted approval of his holding the *material interest*.

As set out in *Regulation 6.2* there are different kinds of material interest. If *ICAEW* has previously approved a non-*authorised person* to hold a specific type of material interest, and that person then acquires a different kind of material interest, this needs to be approved as set out above.

6.11 If a person only becomes aware of the notification requirements referred to in *Regulation 6.10* after making such a proposal, he must give written notification of the

proposal to the *licensed firm* and to *ICAEW* within 7 days of becoming aware of them and before taking the proposed step.

- 6.12 A *non-authorized person* who acquires a *material interest* in a *licensed firm* without taking a step as referred to in *Regulation 6.10* must give written notification of the acquisition to the *licensed firm* and to *ICAEW* within 7 days of becoming aware of the acquisition.
- 6.13 When *ICAEW* receives a notification under any of *Regulations 6.10, 6.11 or 6.12*, or if it becomes aware that a person has failed to comply with an obligation to make such a notification, it may require the person to provide it with any documents or information and, within 90 days of the notification, will decide whether to:
- a approve the person's holding unconditionally;
 - b warn the person that it proposes to approve the holding subject to conditions;
 - c approve the holding subject to conditions;
 - d warn the person that it proposes to object to the holding; or
 - e object to the holding.
- 6.14 *ICAEW* may grant approval to the holding of the *non-authorized person* unconditionally if it is satisfied of the matters specified in *Regulation 6.7*.
- 6.15 If *ICAEW* is not satisfied as required by *Regulation 6.14*, it may exercise either of the powers referred to in *Regulation 6.8*.
- 6.16 Subject to *Regulation 6.17*, before deciding either to grant approval to the holding of the *non-authorized person* subject to conditions or to object to the holding *ICAEW* will:
- a give written notice of the proposed objection or conditions, with reasons for it, to the *licensed firm* and to the *non-authorized person*, stating that representations may be made to *ICAEW* within 28 days;
 - b consider any representations made within the time specified by paragraph (a) above; and
 - c notify the *licensed firm* and the *non-authorized person* as soon as reasonably practicable of any objection or any conditions imposed, with reasons.
- 6.17 *ICAEW* may approve the holding subject to conditions or may object to the holding without giving the notice referred to in *Regulation 6.16* if it considers it necessary or desirable to do so for the purpose of protecting any of the regulatory objectives set out in section 1 of the *Act*.
- 6.18 Any approval granted by *ICAEW* under *Regulations 6.14 or 6.15* is effective only if the *material interest* is acquired within such period as may be specified in the written notice by *ICAEW* of the approval or, if no period is specified, within one year of the date of the notice.

The approval granted by *ICAEW* is subject to the material interest being acquired either within the period set out in the notice, or, if no period is given, within one year. If the interest is not acquired within this time, approval will need to be sought again.

Powers of ICAEW in relation to existing material interests

ICAEW is empowered to give notice objecting to, or imposing conditions on, the holding of existing material interests where necessary.

A person who holds a material interest subject to any condition may apply to *ICAEW* for variation or cancellation of the condition.

- 6.19** If at any time *ICAEW* ceases to be satisfied as required by *Regulation 6.7*, or if it is satisfied that a condition imposed by any of the *regulations* in this section has not been, or is not being, complied with, it may, within 90 days of becoming aware of the matters in question:
- a impose a condition on the holding; or
 - b object to the holding.
- 6.20** *Regulations 6.16* and *6.17* also apply to the exercise by *ICAEW* of the power referred to in *Regulation 6.19*.
- 6.21** A condition imposed under any of the *regulations* in this section may be varied or cancelled by written notice by *ICAEW*:
- a on the application of the person who holds the *material interest*; or
 - b on the initiative of *ICAEW*.

Enforcement of conditions and objections

Where a material interest is held in contravention of the regulations in this section, *ICAEW* may give notice restricting the rights attached to the holding and, subject to the procedural requirements imposed by the Act, may apply to the High Court for an order requiring a non-authorized person to sell shares.

Where a material interest is held in breach of a condition imposed under any of the regulations in this section, *ICAEW* may, subject to the procedural requirements imposed by the Act, apply to the High Court for an order securing compliance.

- 6.22** If a person holds a *material interest* in breach of any condition imposed by *ICAEW* under any of the *regulations* in this section, *ICAEW* may:
- a give written notice to the person that it intends to apply to the High Court for an order securing compliance if the conditions are not complied with before the end of the period specified in the notice (at least 28 days); and
 - b upon expiry of the period specified in the notice, apply to the High Court to make such order securing compliance as the High Court thinks fit.

The High Court will not make an order securing compliance with a condition until the end of the period in which the person can appeal against the imposition of the condition and, if an appeal is made, until the appeal has been determined or withdrawn.

- 6.23** If a non-authorized person, who holds a *material interest* by virtue of a shareholding in a *licensed firm*, breaches:
- a *Regulation 6.10b*; or
 - b any condition or objection imposed by *ICAEW* under any of the *regulations* in this section;
- then *ICAEW* may:
- give a notice under *Regulation 6.24*; and
 - apply to the High Court in accordance with paragraphs 43-45 of schedule 13 to the Act for an order requiring the sale of shares to secure that the non-authorized person no longer holds a *material interest* in contravention of any of the *regulations* in this section.
- 6.24** A notice under this *regulation* is a written notice to the person holding the *material interest* directing that one or more of the following restrictions apply until further notice:

- a any transfer of, or agreement to transfer, the shares, or the right to be issued with the shares, is void;**
- b no voting rights are to be exercisable in respect of the shares;**
- c no further shares are to be issued in right of the shares or in pursuance of any offer made to their holder; or**
- d except in a liquidation, no payment is to be made of any sums due from the body corporate on the shares, whether in respect of capital or otherwise.**

If ICAEW applies to the High Court for a divestiture order, it will at the same time give a restriction notice to the non-authorized person and send a copy of this notice to the firm.

6.25 A notice under *Regulation 6.24* ceases to have effect:

- a if the High Court so orders under paragraph 45(4) of schedule 13 to the Act;**
- b at the end of 90 days if *ICAEW* does not within that time make the application referred to in *Regulation 6.23*; or**
- c if the *licensed firm* ceases to be licensed by *ICAEW*.**

Part 5 of Schedule 13 of the Act requires ICAEW to inform the Legal Services Board of decisions and actions taken under this section.

7 COMPLAINTS RESOLUTION

The following regulations detail how complaints should be dealt with. The Act requires that an accredited probate firm has procedures for dealing with complaints. Firms should take care to notify their existing clients of their right to make a complaint. This should be done at the first appropriate opportunity (eg, if a client complains or at the beginning of the next engagement).

It is clearly to the benefit of clients and firms if any complaints that may arise are dealt with promptly and efficiently. Firms should bear in mind that this may be a particularly stressful time for the client.

7.1 An accredited probate firm must establish procedures to deal with complaints.

7.2 An accredited probate firm must ensure that all clients are notified in writing at the beginning of the engagement of the name of the individual to be contacted in the event of a complaint and of their right to complain to the *Legal Ombudsman*. This individual should be a *principal* in an *authorised firm* or the *Head of Legal Practice* in a *licensed firm*.

Details of the complaint resolution procedure can be included within the terms of engagement or in any other material supplied to the client at the beginning of the engagement. The following is a suggested paragraph for inclusion:

‘If you would like to talk to us about how we could improve our service to you, or if you are unhappy with the service you are receiving, please let us know by contacting [state name of principal]. We will consider carefully any complaint you may make about our probate or estate administration work as soon as we receive it and do all we can to resolve it. We will acknowledge your letter within five business days of its receipt and endeavour to deal with it within eight weeks. If we do not deal with your complaint in this time, or if you are unhappy with our response, you may of course take up the matter with the Legal Ombudsman.’

You must include the contact details for the Legal Ombudsman, which are:

- T 0300 555 0333
- Post Legal Ombudsman, PO Box 6806, Wolverhampton WV1 9WJ
- E enquiries@legalombudsman.org.uk

You must also advise the client of the timescales for making a complaint to the Legal Ombudsman. Ordinarily, the following timescales apply:

- the act or omission, or when the complainant should reasonably have known there was cause for complaint, must have been after 5 October 2010; and
- the complainant must refer the complaint to the Legal Ombudsman no later than:
 - six years from the act/omission; or
 - three years from when the complainant should reasonably have known there was cause for complaint; and
 - the complainant must refer the complaint to the Legal Ombudsman within six months of the date of your firm's written response.

As many complaints arise out of a misunderstanding of what services the firm has been retained to do, the progress in delivering those services and the cost involved, firms should ensure that they advise their clients in writing at the beginning of the engagement of the likely scope and nature of the intended work and the costs involved. Firms should ensure that their clients understand and agree to the process and these costs, and should keep their clients updated on matters as the engagements proceed.

Firms should also bear in mind the importance of learning from complaints. It is recommended that at the conclusion of the complaints process firms reflect on whether procedures and/or systems could be introduced or modified to avoid similar complaints arising in the future.

7.3 If an *accredited probate firm* receives a complaint from a client or a former client it must acknowledge the complaint within five *business days*.

7.4 The *accredited probate firm* must begin immediately to investigate the complaint in a fair, prompt, constructive and honest manner. The investigation should be conducted or supervised by the *Head of Legal Practice* in a *licensed firm*, or by a *principal* in an *authorised firm*.

In the case of serious complaints, firms should bear in mind their obligations and duties under the firm's professional indemnity insurance. If cover is not to be affected, firms should notify insurers of matters that could give rise to a claim as soon as possible. However, the firm must still investigate the complaint and this does not affect the rights of the client to take the matter up with the Legal Ombudsman.

7.5 The *accredited probate firm* must keep a full record of the way in which the complaint has been handled. This documentation must be kept in a separate complaint file.

7.6 If following such an investigation the *accredited probate firm* is of the opinion that the complaint is justified in whole or in part, it must do whatever is appropriate to resolve the complaint, whether by way of remedial work, apology, providing information, returning books or documents, reduction or repayment of fees, or otherwise.

7.7 When the *accredited probate firm* notifies the client of its final response, which should be provided within 8 weeks of receiving the complaint, the client must be informed of their right to refer the matter to the *Legal Ombudsman*.

Once a firm has concluded its investigation of the complaint, it should notify the client in writing of the outcome and how, if appropriate, it intends to rectify the matter. This may lead to more discussions with the client. However, the firm should make it clear to the client when it has made its final response. At this stage the client should also be informed of their right to refer the matter to the Legal Ombudsman.

7.8 If the complaint is not resolved within eight weeks of receipt of the complaint, the client must be informed in writing of their right to request that the *Legal Ombudsman* investigate the matter.

If the complaint is not resolved within eight weeks, the client must be informed of their right to refer the matter to the Legal Ombudsman. This does not prevent a firm continuing to try to resolve the matter with the client, but the client could still request that the Legal Ombudsman look into the matter.

7.9 The *accredited probate firm* must cooperate with the *Legal Ombudsman*.

7.10 The *accredited probate firm* must comply with any decision that the *Legal Ombudsman* may make and promptly comply with any remedy ordered by the *Legal Ombudsman*.

The Legal Ombudsman may decide that a firm should pay the client compensation for any loss, inconvenience or distress caused to the client arising from the matter complained of. The decision may also include an apology, reimbursement of all or part of the firm's fees paid by the client, the requirement that the firm take remedial action to put the matter right or pay another firm to do so, or any other action which the Ombudsman deems necessary.

7.11 The *accredited probate firm* must provide *ICAEW* with such details of complaints as *ICAEW* may request (whether by writing, visiting the *firm's* offices or by any other method) within 20 *business days* of receiving such a request.

8 PROBATE AFFILIATES

ICAEW may accredit a firm which has a principal (an individual or a corporate body) who is not:

- a member;
- a member of one of the bodies listed below;
- an accredited probate firm;
- a registered auditor; or
- a DPB-licensed firm

and who, at the time of the proposed accreditation, is not an affiliate under the audit regulations, the DPB Handbook, the insolvency regulations or ICAEW's regulations governing the use of the description 'chartered accountant' and general affiliates, only if that principal is granted probate affiliate status by ICAEW.

The bodies referred to above are:

- the Institute of Chartered Accountants of Scotland;
- Chartered Accountants Ireland; or
- another approved regulator.

Probate affiliate status does not confer membership of ICAEW or entitle the individual or body corporate to use the title 'chartered accountant'. However, it does mean that a probate affiliate is bound by the same rules and regulations that govern a member of ICAEW.

Granting probate affiliate status

8.1 *Probate affiliate* status does not give the *probate affiliate* any rights other than those contained in these *regulations*. Neither the *probate affiliate* nor his *accredited probate firm* shall make any public representation that the *probate affiliate* has any rights other than those contained in these *probate affiliate regulations*.

- 8.2 A person must apply for *probate affiliate* status in the manner decided by ICAEW. To carry out its responsibilities under these *probate affiliate regulations*, ICAEW may make any enquiries necessary to assess the eligibility of the applicant.
- 8.3 ICAEW may grant *probate affiliate* status if it is satisfied that the applicant:
- a is a fit and proper person to be granted *probate affiliate* status;
 - b has agreed to comply with these *regulations*;
 - c has agreed to observe and uphold ICAEW's Code of Ethics; and
 - d has agreed to provide ICAEW with all the information it needs.
- 8.4 ICAEW may, on receiving an application for *probate affiliate* status:
- a grant *probate affiliate* status;
 - b reject the application;
 - c grant *probate affiliate* status with restrictions or conditions; or
 - d postpone consideration of the application.
- 8.5 ICAEW may at any time vary or end a restriction or condition made under *Regulation 8.4*.

Withdrawal of probate affiliate status

- 8.6 ICAEW may in its sole discretion withdraw *probate affiliate* status if the *probate affiliate*:
- a is in the opinion of ICAEW no longer a fit and proper person;
 - b fails to pay on time any fines or costs ordered by any committee or tribunal of ICAEW;
 - c has a disciplinary order made against him by any committee or tribunal of ICAEW;
 - d fails to pay the annual subscription within 30 days of the date of a notice to renew *probate affiliate* status; or
 - e fails or ceases to comply with any of these *regulations* and, in the circumstances, ICAEW considers that withdrawal is justified.

Decisions under Regulations 8.4, 8.5 or 8.6 will come into effect as set out in section 10.

If a probate affiliate is dissatisfied with a decision made by ICAEW under Regulations 8.4, 8.5 or 8.6 it may apply for a review of the decision in accordance with the procedures set out in section 11.

Cessation of probate affiliate status

- 8.7 *Probate affiliate* status will cease if:
- a subject to *Regulation 8.8*, the *firm* in which the *probate affiliate* is a *principal* ceases to be *accredited*;
 - b subject to *Regulation 8.8*, the *probate affiliate* ceases to be a *principal* in the *accredited probate firm* to which the grant of *probate affiliate* status related;
 - c the *probate affiliate* is an individual and has a bankruptcy order made against him;
 - d the *probate affiliate* is a body corporate which:
 - has been the subject of an effective resolution passed by the shareholders (or in the case of a limited liability partnership, by its members) for it to be wound up or has had a winding up order made against it on the grounds of insolvency;
 - has had an administration order made against it on grounds of insolvency; or
 - has had a receiver appointed by a creditor or by a court on the application of a creditor.
- 8.8 *Probate affiliate* status will not cease under *Regulation 8.7a* or *8.7b* if:

- a the *accredited probate firm* in which the *probate affiliate* is a *principal* merges with or is acquired by another *accredited probate firm*; or
- b the *probate affiliate* leaves the *accredited probate firm* in which he is a *principal* and immediately becomes a *principal* in another *accredited probate firm*;

provided that *ICAEW* is informed within 10 *business days* of the event. Otherwise, disciplinary action may be taken and *probate affiliate* status withdrawn.

Changes in circumstances

- 8.9 A *probate affiliate* or the *accredited probate firm's contact partner* must inform *ICAEW* in writing within 10 *business days* of any changes relevant to matters considered by *ICAEW* under *Regulation 8.3*.

Fees

- 8.10 *Probate affiliates* must pay a fee each year in addition to the *accredited probate firm's* annual fee. The first annual fee for *probate affiliate* status is due when an application is made for such status, together with any application fee.
- 8.11 The amount of the fees for *probate affiliate* status will be determined by *ICAEW* from time to time.

Disciplinary arrangements

- 8.12 The disciplinary provisions of *ICAEW* that apply to a *member* also apply to a *probate affiliate*.
- 8.13 A *probate affiliate* shall be liable to disciplinary action for any failure to observe and uphold any guidance issued by *ICAEW*, including any ethical guidance.
- 8.14 A *probate affiliate* will remain liable to disciplinary action under these *regulations* for any acts or omissions relating to the obligations in these *regulations* during the period in which *probate affiliate* status was held, regardless of any subsequent cessation of such status.

9 PROBATE AND OTHER COMMITTEES

This section describes the various committees involved in the regulatory process and their powers. Some, but not all, of the powers may be delegated by the Probate Committee to either sub-committees or staff.

A firm generally has the right to seek a review of a decision. Details are in section 11.

Probate Committee

- 9.1 There shall be a *Probate Committee* which must:
- a comprise ten members, half of whom must be lay members; and
 - b have a quorum of five members, the majority of whom must be lay members.

The chairman of the Probate Committee must be a lay member and will have the casting vote where required. A lay member is a person who has never qualified or practised as a professional accountant. Solicitors and persons with legal training are also unable to act as lay members on the committee.

Members of *ICAEW's* Council and Board are excluded from membership of this committee.

- 9.2** The *Probate Committee* is responsible for discharging *ICAEW's* functions as an *approved regulator* and *licensing authority* as set out in these *regulations* and is also responsible for:
- a reviewing the returns and reports made under these *regulations*, and investigating failure to make returns or reports;
 - b making appropriate enquiries into the eligibility of applicants for *accreditation*; *authorised individual* status; *Head of Legal Practice* status; *Head of Finance and Administration* status; or *probate affiliate* status (by writing, visiting a *firm's* office or offices, or in any other way);
 - c making appropriate enquiries into the eligibility of applicants for status as non-*authorised persons* who hold *material interests* in *licensed firms*;
 - d making appropriate enquiries to confirm that an *authorised person*, *Head of Legal Practice*, *Head of Finance and Administration* or *probate affiliate* is complying with these *regulations* (by writing, visiting a *firm's* office or offices, using a periodic return, or in any other way);
 - e making appropriate enquiries to confirm that a non-*authorised person* who holds a *material interest* in a *licensed firm* is complying with these *regulations* (by writing, visiting a *firm's* office or offices, using a periodic return, or in any other way);
 - f publishing, in any manner it decides, its decisions if it considers this appropriate; and
 - g compiling and maintaining a *register of licensed firms* and supplying information to the *Legal Services Board* as required.

In discharging its functions the Probate Committee will have regard at all times to the public interest, and the requirements and regulatory objectives of the Act.

- 9.3** The *Probate Committee* may delegate the following functions to sub-committees, *ICAEW's* staff, or another duly appointed agent:
- granting applications for *accreditation* under *Regulation 2.5a*;
 - granting applications for *accreditation* subject to conditions under *Regulation 2.5c*;
 - varying or ending a condition or restriction under *Regulation 2.6*;
 - granting applications for *authorised individual*, *Head of Legal Practice* or *Head of Finance and Administration* status under *Regulation 4.4*;
 - granting applications for *authorised individual*, *Head of Legal Practice* or *Head of Finance and Administration* status subject to conditions under *Regulation 4.4*;
 - varying or ending a condition or restriction under *Regulation 4.6*;
 - granting approval to a holding of a *material interest* by a non-*authorised person* with or without conditions under *Regulations 6.7, 6.8a, 6.14 or 6.15*;
 - deciding to vary or end a condition on the holding of a *material interest* by a non-*authorised person* under *Regulation 6.21*;
 - granting applications for *probate affiliate* status under *Regulation 8.4a*;
 - granting applications for *probate affiliate* status subject to conditions under *Regulation 8.4c*;
 - varying or ending a condition or restriction under *Regulation 8.5*;
 - withdrawing *probate affiliate* status under *regulations*:
 - 8.6b - failure to pay on time any fines or costs;
 - 8.6c - disciplinary order; or

- 8.6d - failure to pay annual subscriptions;
- reviewing the returns and reports made under these regulations, and investigating failure to make returns or reports;
- making appropriate enquiries into the eligibility of applicants for accreditation; authorised individual status; Head of Legal Practice status; Head of Finance and Administration status; or probate affiliate status (by writing, visiting a firm's office or offices, or in any other way);
- making appropriate enquiries into the eligibility of non-authorised persons who seek approval as holders of material interests in a licensed firm;
- making appropriate enquiries to confirm that an authorised person; Head of Legal Practice; Head of Finance and Administration; or probate affiliate is complying with these regulations (by writing, visiting a firm's office or offices, using a periodic return, or in any other way);
- making appropriate enquiries to confirm that a non-authorised person who holds a material interest in a licensed firm is complying with these regulations (by writing, visiting a firm's office or offices, using a periodic return, or in any other way);
- publishing, in any manner it decides, its decisions if it considers this appropriate;
- compiling and maintaining a register of licensed firms and supplying information to the Legal Services Board as required;
- imposing a condition on accreditation under *Regulation 10.1*;
- varying or ending a condition or restriction under *Regulation 10.2*; or
- withdrawing accreditation under regulations:
 - 10.3b - non-compliance with the PII Regulations;
 - 10.3c - failure or delay in submitting a return or report;
 - 10.3d - failure to pay amounts due;
 - 10.3e - failure to pay costs awarded by the *Review Committee*; or
 - 10.3f - failure to pay fines or costs awarded by *ICAEW's* disciplinary committees or the *Appeal Tribunal*.

9.4 All information obtained under these *regulations* will be confidential but may be disclosed by *ICAEW* (directly or indirectly) to any person or body undertaking regulatory, redress, disciplinary or law enforcement responsibilities for the purpose of assisting that person or body to undertake those responsibilities or as otherwise required or allowed by law.

All information that *ICAEW* receives will remain confidential except in the above circumstances.

9.5 In carrying out its responsibilities under these *regulations*, *ICAEW*, the *Probate Committee*, the *Review Committee* and the *Appeal Tribunal* may consider any disciplinary findings, orders, ongoing investigations or any other information (including criminal and civil court judgments) concerning or affecting the *firm* or its *principals* or *employees*, any non-authorised persons holding a *material interest* in a *firm* (either actual or proposed), an applicant for *authorised individual* status, an *authorised individual*, an applicant for *Head of Legal Practice* status, a *Head of Legal Practice*, an applicant for *Head of Finance and Administration* status, a *Head of Finance and Administration*, an applicant for *probate affiliate* status or *probate affiliate*.

Regulation 9.5 allows consideration of any disciplinary or other matter that affects the firm.

Notification to committees

- 9.6** The *Probate Committee* must notify the *Investigation Committee* about any fact or matter which:
- a** suggests that an *accredited probate firm*, an *authorised individual*, a *Head of Legal Practice*, a *Head of Finance and Administration*, a *probate affiliate* or any other person (including a *non-authorised person* holding a *material interest*) may be liable to disciplinary action under these *regulations* or other regulations or by-laws of *ICAEW*; and
 - b** in the opinion of the *Probate Committee* needs to be investigated.
- 9.7** The *Investigation Committee* must inform the *Probate Committee* about any fact or matter which appears to it to be relevant to the powers and duties of the *Probate Committee* under these *regulations*.

Under Regulations 9.6 and 9.7 information may be exchanged between the ICAEW committees responsible for regulation and discipline.

10 REGULATORY ACTION

This section explains how ICAEW may take regulatory action against an accredited probate firm, including withdrawal of accreditation if necessary.

Regulatory decisions come into effect as set out in Regulations 10.9 to 10.11.

A firm may ask for a review of a decision and this is dealt with in section 11. A firm must apply for a review within 10 business days (or in some cases 28 days) of the decision being given to the firm.

Restrictions and conditions

- 10.1** *ICAEW* may impose restrictions or conditions on an *accredited probate firm* if it considers that:
- a** any of the circumstances mentioned in *Regulation 10.3a* to *10.3f* or *10.3j* exist, or may exist, and the restrictions or conditions are justified;
 - b** the *firm* has not or may not have complied with these *regulations* in the past, and the restrictions or conditions are justified;
 - c** there is reason to believe that the *firm* may cease to comply with these *regulations* in the future and the restrictions or conditions are justified;
 - d** being *accredited* or continuing *probate work* without restrictions or conditions could adversely affect a client or any other person; or
 - e** it is appropriate to do so to ensure that *probate work* is undertaken, supervised and managed effectively.
- 10.2** *ICAEW* may at any time vary or end a restriction or condition made under *Regulation 10.1*.

ICAEW may place conditions on how an accredited probate firm carries out or manages its probate work. These could be that a firm should undertake specified training or change its procedures.

ICAEW may place restrictions on an accredited probate firm such as:

- against the firm, for example that it cannot accept any new clients or probate work;
- against a principal, for example that a particular principal may no longer be an authorised individual; or
- that an employee may no longer be involved in probate work.

If conditions or restrictions are imposed by ICAEW, a firm will have to undertake to comply with the terms of the restriction or condition. Any failure to deal with these matters is likely to be viewed extremely seriously.

As an alternative to regulatory action, ICAEW may accept a written undertaking from a firm that it will undertake a particular course of action.

Withdrawal of accreditation

10.3 ICAEW may withdraw a firm's accreditation if:

- a** it considers that the *firm* no longer meets one or more of the eligibility requirements of *Regulations 2.2 or 2.3*;
- b** it considers that the *firm* is not complying with the PII Regulations;
- c** the *firm* is over 30 days late submitting the required returns or reports;
- d** the *firm* has not paid the amounts due under *Regulations 2.14, 2.15 or 2.16* within 60 days of the date of an invoice under *Regulation 2.17*;
- e** the *firm* has not paid the costs in the time set by the *Review Committee* under *Regulation 11.4*;
- f** the *firm* has not paid in the time set any fines or costs ordered by the *Investigation Committee, the Disciplinary Committee, or the Appeal Tribunal*;
- g** it considers that the *firm* has not complied with any restriction or condition under *Regulation 10.1* or any written undertaking that the *firm* has given to ICAEW;
- h** it considers that the *firm* or any of its *principals, employees* and shareholders have not complied with any other *Regulation* and, in the circumstances, withdrawal is justified;
- i** it considers that the continued *accreditation* of the *firm* may adversely affect a client or any other person; or
- j** in the case of a *licensed firm*, a *non-authorized person* holds an interest in the *firm* as a result of which the *firm* has ceased to comply with any of the *regulations* in section 6.

Suspension

10.4 ICAEW may suspend an accredited probate firm's accreditation for a period if it considers that:

- a** any of the circumstances mentioned in *Regulation 10.3a to 10.3g or 10.3j* exists or may exist;
- b** the *firm* is not, or may no longer be, complying with these *regulations*; or
- c** the continuation of the *firm's probate work* could adversely affect a client or any other person.

10.5 During a period of suspension an accredited probate firm:

- a** may continue with any ongoing *probate work* with the permission of the *Probate Committee*; but
- b** may not accept any new appointments for *probate work*.

10.6 ICAEW may vary or end a suspension made under Regulation 10.4.

ICAEW can decide that a firm's accreditation is suspended rather than withdrawing accreditation. This allows ICAEW to consider further evidence while protecting the public interest.

Urgent orders

- 10.7** ICAEW may impose restrictions or conditions on a *firm's accreditation* in the terms permitted by *Regulation 10.1* by means of an urgent order if it considers that, in addition to the matters justifying the imposition under *Regulation 10.1*, there is:
- a a risk of loss to a client of the firm if an urgent order is not made, or
 - b another reason justifying the making of an urgent order.
- 10.8** *Regulation 10.7* is subject to ICAEW allowing the *accredited probate firm* an opportunity to make oral or written representations within **10 business days** of the urgent order being made. Having considered any representations ICAEW may:
- a end the order; or
 - b continue the order.

Regulation 10.7 allows ICAEW to take immediate regulatory action if the need arises. ICAEW may do this in the case of, for example, serious allegations or if there is a potential or actual loss of client money. As well as making immediate representations on the fact that an urgent order has been made, a firm can ask for a review under Regulation 11.2 of any underlying decision made under Regulation 10.1. The order comes into force when it is served on the firm (see Regulation 10.9) and is not lifted if a review is requested.

Implementation of decisions and orders

- 10.9** A decision made under *Regulations 2.5, 2.6, 2.13, 2.20, 2.21, 4.4, 4.6, 5.4, 6.7, 6.8, 6.13, 6.19, 6.21, 8.4, 8.5, 10.2, 10.6, 10.7, or 11.7* will come into effect as soon as notice of it is served on the *firm*.

The regulations quoted in regulation 10.9 concern the following:

- the grant or refusal of an application for accreditation under Regulation 2.5;
- the decision to vary or end a condition or restriction on accreditation under Regulation 2.6;
- decisions on applications to modify accreditation under Regulation 2.13;
- the grant or refusal of dispensations under Regulations 2.20 and 2.21;
- the grant or refusal of authorised individual status, or status as a Head of Legal Practice or Head of Finance and Administration under Regulation 4.4;
- the decision to vary or end a condition or restriction on a person's status as an authorised individual, Head of Legal Practice or Head of Finance and Administration under Regulation 4.6;
- the decision to end a person's disqualification under Regulation 5.4;
- the decision to approve a holding by a non-authorised person either unconditionally or subject to conditions, or to object to the holding, prior to the grant of a firm's accreditation under Regulations 6.7 and 6.8;
- the decision to approve a holding by a non-authorised person either unconditionally or subject to conditions, or to object to a holding, following a firm's accreditation under Regulation 6.13;
- the decision to approve a holding of a material interest by a non-authorised person subject to conditions, or to object to such a holding, following a firm's accreditation under Regulation 6.15;
- the decision to impose conditions on a holding, or to object to a holding, of an existing material interest by a non-authorised person under Regulation 6.19;
- the decision to vary or end a condition on a holding of a material interest by a non-

- authorised person under Regulation 6.21;
- the grant or refusal of an application for probate affiliate status under Regulation 8.4;
- the decision to vary or end a condition or restriction on a person's status as a probate affiliate under Regulation 8.5;
- the decision to vary or end a condition or restriction on accreditation under Regulation 10.2;
- the decision to vary or end a suspension on accreditation under Regulation 10.6;
- orders in respect of restrictions or conditions on a firm's accreditation that are made on a urgent basis under Regulation 10.7; and
- Appeal Tribunal decisions under Regulation 11.7.

10.10 A decision made under *Regulations 4.7e, 5.1, 8.6 or 10.1* will come into effect 10 business days after notice of it is served on the *firm* or any later time that *ICAEW* specifies, save that:

- a if a *firm* has applied for a review under *Regulation 11.2*, the effect of the decision will be suspended pending a decision on the review under *Regulation 11.3* or the withdrawal of the request for a review; or**
- b if a *firm* appeals to the *Appeal Tribunal* the effect of the decision will be suspended until the appeal is finally determined or withdrawn.**

Decisions made under the regulations referred to in Regulation 10.10 come into effect 10 business days after the firm has been given the decision. However, the decisions are postponed if an application for review or appeal is made. The decision of the Review Committee or Appeal Tribunal is the one that will come into effect.

The regulations referred to in Regulation 10.10 concern the following:

- withdrawal of status as an authorised individual under Regulation 4.7e;
- disqualification from status as a Head of Legal Practice or Head of Finance and Administration or from being a principal or an employee of a licensed firm under Regulation 5.1;
- withdrawal of status as a probate affiliate under Regulation 8.6; and
- the imposition of conditions or restrictions on an accredited probate firm under Regulation 10.1.

Regulation 1.5 details how decisions and orders are served on firms.

10.11 A decision made under *Regulations 10.3 or 10.4* will come into effect 28 days after notice of it is served on the *accredited probate firm* or any later time that *ICAEW* specifies, save that:

- a if a *firm* has applied for a review under *Regulation 11.2*, the effect of the decision will be suspended pending a decision on the review under *Regulation 11.3* or the withdrawal of the request for a review; or**
- b if a *firm* appeals to the *Appeal Tribunal* the effect of the decision will be suspended until the appeal is finally determined or withdrawn.**

Decisions made under the regulations referred to in Regulation 10.11 come into effect 28 days (rather than business days) after the firm has been given the decision. However, the decisions are postponed if an application for review or appeal is made. The decision of the Review Committee or Appeal Tribunal is the one that will come into effect.

The regulations referred to in Regulation 10.11 relate to the following:

- withdrawal of a firm's accreditation under Regulation 10.3; and
- suspension of a firm's accreditation under Regulation 10.4.

11 REVIEW AND APPEAL PROCESS

At the request of a firm or an accredited probate firm, a decision to refuse an application, grant it with conditions, withdraw a firm's accreditation or only allow it to continue with conditions or restrictions may be reviewed by ICAEW using the following process.

The same process may be used against a decision to reject an application for authorised individual status, Head of Legal Practice status, Head of Finance and Administration status or affiliate status. It may also be used against a decision to grant these applications with restrictions or conditions or to withdraw status altogether.

Similarly this process may be used against a decision to object to the holding or continued holding of a material interest or a decision to allow a holding subject to conditions.

11.1 In *Regulations 11.2 to 11.8*, 'affected party' means:

- a *firm*;
- an *accredited probate firm*;
- an applicant for *authorised individual status*;
- an *authorised individual*;
- an applicant for *Head of Legal Practice status*;
- a *Head of Legal Practice*;
- an applicant for *Head of Finance and Administration status*;
- a *Head of Finance and Administration*;
- an applicant for *probate affiliate status*;
- a *probate affiliate*;
- a person seeking approval of the holding of a *material interest*; or
- a person holding a *material interest* in a *licensed firm*
which is affected by a decision of *ICAEW* under these *regulations*.

Review

- 11.2a An affected party may apply for a review in accordance with *Regulations 11.2b* and *11.2c*.
- 11.2b An application for review must be made in writing to *ICAEW* within 10 *business days* of service on the affected party of a decision made under:
- | | |
|------------------------|---|
| <i>Regulation 2.5b</i> | refusing to grant a <i>firm accreditation</i> as an authorised or <i>licensed firm</i> ; |
| <i>Regulation 2.5c</i> | granting <i>accreditation</i> to a <i>firm</i> subject to conditions or restrictions; |
| <i>Regulation 2.6</i> | refusing to vary or end a condition or restriction on a <i>firm's accreditation</i> or varying a <i>firm's accreditation</i> in terms other than those sought in the <i>firm's</i> application; |
| <i>Regulation 2.13</i> | refusing to modify a <i>firm's accreditation</i> or modifying a <i>firm's accreditation</i> in terms other than those sought in the <i>firm's</i> application for modification; |
| <i>Regulation 2.21</i> | refusing to grant a dispensation from the <i>regulations</i> ; |

- Regulation 4.4** refusing to grant *authorised individual, Head of Legal Practice or Head of Finance and Administration* status or granting such status subject to conditions or restrictions;
- Regulation 4.6** refusing to vary or end a condition or restriction on a person's *authorised individual, Head of Legal Practice or Head of Finance and Administration* status, or varying the condition or restriction in terms other than those sought in the person's application;
- Regulation 4.7e** withdrawing *authorised individual* status;
- Regulation 5.1** disqualifying a person from acting as a *Head of Legal Practice or Head of Finance and Administration* or from being a *principal or employee* of any *licensed firm*;
- Regulation 5.4** refusing to order that a person's disqualification shall cease to be in force;
- Regulation 6.8** objecting to the holding of a *material interest* or granting approval subject to conditions;
- Regulation 6.15** objecting to a change in the holding of a *material interest* or granting approval subject to conditions;
- Regulation 6.19** objecting to the continued holding of a *material interest* or imposing conditions on that holding;
- Regulation 6.21** refusing to vary or end a condition on the holding of a *material interest* by a *non-authorised person*, or varying the condition in terms other than those sought in the person's application;
- Regulation 8.4b** refusing to grant *probate affiliate* status;
- Regulation 8.4c** granting *probate affiliate* status subject to conditions or restrictions;
- Regulation 8.5** refusing to vary or end a condition or restriction on a person's status as a *probate affiliate*, or varying the condition or restriction in terms other than those sought in the person's application;
- Regulation 8.6** withdrawing *probate affiliate* status; and
- Regulation 10.1** imposing restrictions or conditions on *accreditation*.
- 11.2c An application for review must be made in writing to *ICAEW* within 28 days of service on the affected party of a decision made under:
- Regulation 10.3** withdrawing an *accredited probate firm's accreditation*; or
- Regulation 10.4** suspending an *accredited probate firm's accreditation*.
- 11.3 A meeting of the *Review Committee* will be arranged as soon as practicable after an affected party has applied under *Regulation 11.2b* or *11.2c*. The *Review Committee* will consider the matter afresh and will hear new material put forward by the affected party. The *Review Committee* may make any decision which *ICAEW* could have made.
- 11.4 The *Review Committee* may require an affected party to contribute to the costs of the review. The *Review Committee* has the same powers as *ICAEW* when making decisions in relation to a firm, an accredited probate firm, an applicant for authorised individual status, an authorised individual, an applicant for Head of Legal Practice status, a Head of Legal Practice, an applicant for Head of Finance and Administration status, a Head of Finance and Administration, an applicant for affiliate status or a probate affiliate. It can also make decisions disqualifying persons from holding positions in licensed firms (as set out in section 5) or from holding material interests in those firms (as set out in section 6).

It can impose the same, more severe or less severe decisions. It can also award costs. Costs are likely to be awarded if, for example, the affected party fails to attend the review when it said it would, does not send in further material it has promised, or the application is frivolous.

Appeal

A firm or person who is the subject of a decision of the Review Committee and is dissatisfied with that decision can appeal to the Appeal Tribunal.

The Appeal Tribunal is the General Regulatory Chamber of the First-tier Tribunal. This is the independent public body established under the Tribunals, Courts and Enforcement Act 2007 for deciding appeals. Such appeals will be subject to the Tribunal Procedure (First-tier Tribunal) (General Regulatory Chamber) Rules 2009 (SI 2009/1976). Parties should note in particular the time limit (28 days from when the notice of the Review Committee's decision was sent to the affected party, subject to a discretionary power to extend or shorten the time limit) and the requirements for a notice of appeal imposed by those Rules.

The Appeal Tribunal can only consider an appeal on any of the grounds in Regulation 11.5. On appeal, the decision of the Review Committee is postponed until the Appeal Tribunal confirms or varies the decision (see Regulation 10.10 and 10.11).

Upon an appeal the Appeal Tribunal has the powers set out in Regulation 11.7.

- 11.5 The affected party may appeal to the *Appeal Tribunal* against the *Review Committee's* decision on one or more of the following grounds:**
- a that the *Review Committee*:**
 - i was wrong in law; or**
 - ii wrongly interpreted any relevant regulation, bye-law, or associated guidance;**
 - b that the *Review Committee* made a decision which no tribunal, correctly applying the law to the facts before it and acting reasonably, would have made; or**
 - c that there was evidence which the *Review Committee* had not considered and which:**
 - i could reasonably have led the *Review Committee* to make a different decision; and**
 - ii could not have been put before the *Review Committee* even if those concerned had done their best to produce it, including evidence that was not in existence at the time the *Review Committee* made its decision.**

Regulations 10.9 to 10.11 explain when decisions come into effect.

- 11.6 An appeal to the *Appeal Tribunal* cannot be made if the appeal is only against the costs awarded by the *Review Committee*.**
- 11.7 On appeal the *Appeal Tribunal* may:**
- a affirm the *Review Committee's* decision wholly or in part;**
 - b set aside the *Review Committee's* decision wholly or in part;**
 - c substitute for all or part of the *Review Committee's* decision a new decision which the *Review Committee* could have made;**
 - d send the matter back to the *Review Committee* to be considered again (generally, or in accordance with a finding made or direction given by the *Appeal Tribunal*); or**
 - e dismiss the appeal.**
- 11.8 If the *Appeal Tribunal* sends a matter back to the *Review Committee* under regulation 11.7 then *Regulation 11.3* will apply when the *Review Committee* reconsiders. The meeting of the *Review Committee* to reconsider the matter will be arranged as soon as is practicable.**

12 DISCIPLINARY ARRANGEMENTS

The Probate Committee does not have the power to apply the disciplinary arrangements of ICAEW to the firms that it accredits. Only the Disciplinary or Investigation Committees can do this. The bye-laws already provide a framework for disciplinary action to be taken against members or firms and the purpose of this section is to apply the disciplinary arrangements of ICAEW to the firms that it accredits. If the terms of these regulations differ from those of the bye-laws, these regulations prevail.

Any fine imposed by the tribunal in the exercise of ICAEW's powers as a licensing authority cannot exceed the amount(s) from time to time stipulated by the Legal Services Board under section 95 of the Act (currently £250m in the case of a firm or £50m in the case of an individual: see the Legal Services Act 2007 (Licensing Authorities) (Maximum Penalty) Rules 2011 (SI 1659/2011).

Under regulation 12.2 the Disciplinary Committee shares with the Probate Committee the power to withdraw status as an accredited probate firm or authorised individual or to disqualify an individual from holding the status of Head of Legal Practice or Head of Finance and Administration or from being a principal of, or employed by, any licensed firm.

Appeals against decisions of the Disciplinary Committee are made to the Appeal Tribunal. This is the General Regulatory Chamber of the First-tier Tribunal, which is the independent public body established under the Tribunals, Courts and Enforcement Act 2007 for deciding appeals. Such appeals will be subject to the Tribunal Procedure (First-tier Tribunal) (General Regulatory Chamber) Rules 2009 (SI 2009/1976). Parties should note in particular the time limit (28 days from when the notice of the Disciplinary Committee's decision was sent to the affected party, subject to a discretionary power to extend or shorten the time limit) and the requirements for a notice of appeal imposed by those Rules.

- 12.1 Save as provided below, the Disciplinary Bye-laws apply to breaches of these regulations:**
- a as if references in those bye-laws to a member firm, authorised firm or contracted firm are construed as references to an *accredited probate firm*; and**
 - b as if references in those bye-laws to a member are construed as references to a *relevant person*.**
- 12.2 In addition to the powers of a tribunal set out in the Disciplinary Bye-laws, if the *Disciplinary committee* considers that a complaint brought by the *Investigation Committee* under this section is proved, it will make a finding to that effect. The *Disciplinary Committee* will take the seriousness, the type of complaint and any other relevant circumstances into account and may make any of the following orders:**
- a that the *accredited probate firm* or *relevant person* be reprimanded or severely reprimanded;**
 - b that the *accredited probate firm* or *relevant person* be fined;**
 - c that status as an *accredited probate firm* or *authorised individual* be withdrawn; or**
 - d that an individual be disqualified under *Regulation 5.1* from acting as the *Head of Legal Practice*, as the *Head of Finance and Administration* or as a *principal* or *employee* of any *licensed firm*.**
- 12.3 The affected party may appeal to the *Appeal Tribunal* against the *Disciplinary Committee's* decision under this section on one or more of the following grounds:**
- a that the *Disciplinary Committee*:**

- i was wrong in law; or
- ii wrongly interpreted any relevant regulation, bye-law, or associated guidance;
- b that the *Disciplinary Committee* made an order which no tribunal, correctly applying the law to the facts before it and acting reasonably, would have made; or
- c that there was evidence which the *Disciplinary Committee* had not considered and which:
 - i could reasonably have led the *Disciplinary Committee* to make a different order; and
 - ii could not have been put before the *Disciplinary Committee* even if those concerned had done their best to produce it, including evidence that was not in existence at the time the *Disciplinary Committee* made the order; and/or
- d in the case of an appeal against the imposition of a fine:
 - i that the imposition of the fine is unreasonable in all the circumstances of the case;
 - ii that the amount of the fine is unreasonable; or
 - iii that it is unreasonable of the *Disciplinary Committee* to require the penalty imposed or any portion of it to be paid by the time or times by which it was required to be paid.

12.4 An appeal to the *Appeal Tribunal* cannot be made if the appeal is only against the costs awarded by the *Disciplinary Committee*.

12.5 On appeal the *Appeal Tribunal* may:

- a affirm the *Disciplinary Committee's* order wholly or in part;
- b set aside the *Disciplinary Committee's* order wholly or in part;
- c substitute for all or part of the *Disciplinary Committee's* order a new decision which the *Disciplinary Committee* could have made; or
- d send the matter back to the *Disciplinary Committee* to be considered again (generally, or in accordance with a finding made or direction given by the *Appeal Tribunal*); or
- e dismiss the appeal; and/or
- f in the case of an appeal against the imposition of a fine:
 - i quash the fine;
 - ii substitute a fine of such lesser amount as it considers appropriate; or
 - iii change the time by which the fine is required to be paid.

Regulatory penalties

ICAEW may decide that a referral to the Investigation Committee to investigate an apparent failure to comply with these regulations is not appropriate. Instead, with the agreement of the firm, ICAEW may propose a regulatory penalty. The following regulations explain this process.

12.6 *ICAEW* may propose a *regulatory penalty* to an *accredited probate firm* subject to the following:

- a the *accredited probate firm* must have agreed that the breach of these *regulations* has been committed;
- b *ICAEW* will decide the amount of the penalty and when it is to be paid and will set this out in the letter to the *accredited probate firm* proposing the penalty; and
- c if the *accredited probate firm* wishes to accept the terms on which the penalty is proposed, it must notify *ICAEW* within 10 *business days* of the date of service of the letter from *ICAEW* containing the proposal.

- 12.7** There are no rights of review or appeal against a *regulatory penalty*.
- 12.8** *ICAEW* will take account of any comments an *accredited probate firm* makes about the terms of the *regulatory penalty*. It may then reduce the amount of the penalty.
- 12.9** If the *accredited probate firm* accepts the penalty under *Regulation 12.6c*, *ICAEW*, as soon as is practicable:
- a** will make a decision; and
 - b** may publish the decision in any way it decides.
- 12.10** Details of any penalty accepted, and the decision made, will be kept by *ICAEW* and it may, if it wishes, use that information in the future.
- 12.11** If an *accredited probate firm* does not agree that the breach has been committed, or does not agree to the terms of the penalty proposed or fails to comply with the terms of the penalty, the matter may be dealt with under the **Disciplinary Bye-laws**.

Regulatory penalties are likely to be used, for example, if a firm has consistently been late in replying to letters from *ICAEW*, has failed to submit annual returns, has given incorrect information on the return, or has not honoured undertakings given to *ICAEW*.

There is no right of appeal, as a regulatory penalty can only be made with the firm's agreement. Once a matter has been settled by a regulatory penalty, there will be no further regulatory or disciplinary action against the firm on the matter. However, the details of the regulatory penalty will be put on the firm's record and may be taken into account in the future.