

Cancellation of designation as an approved regulator

Under section 45(3) of the Legal Services Act 2007

Application by ACCA

22 October 2021

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CONTENTS

- 1. EXECUTIVE SUMMARY 1**
 - About ACCA 1
 - Statement of application 1
 - Structure of the application 1

- 2. CANCELLATION OF DESIGNATION AS AN APPROVED REGULATOR 2**
 - Designation as an approved regulator 2
 - Review of probate regulation and recommendations 2
 - Rationale for de-designation as an approved regulator 3
 - CILEx Regulation pathway..... 6
 - Alternative courses of action considered..... 7
 - Affected authorised persons 7
 - Stakeholder engagement..... 8
 - Regulatory objectives 9
 - Impact assessments 12
 - Approved regulators, other appropriate regulators and consumers 12
 - Equality, diversity and inclusion..... 13
 - Regulatory arrangements..... 13

- 3. PROPOSED TRANSFER ARRANGEMENTS 13**
 - Transfer of regulation..... 13
 - Choice of regulator 14
 - CILEx Regulation pathway 14
 - Regulatory gaps and enforcement..... 15
 - Evaluation and monitoring 16
 - Tripartite Memorandum of Understanding 17
 - Framework Memorandum of Understanding 17
 - Resolution of regulatory conflict with other regulatory regimes 17
 - Complaints handling by firms 18
 - Investigation of complaints 18
 - Transfer of amounts..... 19

- 4. WITHDRAWAL OF REGULATORY ARRANGEMENTS FOR PROBATE 19**
 - Non-compliance with the Internal Governance Rules..... 19
 - Cessation of new applications for probate authorisation 19
 - Application for alterations to ACCA’s regulatory arrangements for probate 20

- 5. TIMETABLE 20**

- 6. PRESCRIBED FEE 21**

- 7. NOTICE REQUIREMENTS 21**

- 8. CONTACT DETAILS 22**

- 9. GLOSSARY OF TERMS AND ABBREVIATIONS 22**

- 10. APPENDICES 24**

1. EXECUTIVE SUMMARY

About ACCA

- 1.1 **ACCA** (the Association of Chartered Certified Accountants) is the global body for professional accountants.
- 1.2 We're a thriving global community of **233,000** members and **536,000** future members based in **178** countries and regions, who work across a wide range of sectors and industries. We uphold the highest professional and ethical values.
- 1.3 We offer everyone everywhere the opportunity to experience a rewarding career in accountancy, finance and management. Our qualifications and learning opportunities develop strategic business leaders, forward-thinking professionals with the financial, business and digital expertise essential for the creation of sustainable organisations and flourishing societies.
- 1.4 Since 1904, being a force for public good has been embedded in our purpose. We believe that accountancy is a cornerstone profession of society and is vital in helping economies, organisations and individuals to grow and prosper. It does this by creating robust trusted financial and business management, combating corruption, ensuring organisations are managed ethically, driving sustainability, and providing rewarding career opportunities.
- 1.5 And through our cutting-edge research, we lead the profession by answering today's questions and preparing for the future. We're a not-for-profit organisation. Find out more at accaglobal.com

Statement of application

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

Structure of the application

- 1.7 Our application is made in accordance with the LSB's [Rules for applications to cancel designation as an approved regulator](#).

- 1.8 The application provides details as to why ACCA is making the application, including the new pathway with CILEx Regulation (**CRL**) and the alternative courses of action we have considered and explored. It contains details of the **affected authorised persons** and the communications with them in relation to the cancellation of ACCA's designation as an AR. It also explains the arrangements ACCA is proposing for the transfer of the regulation of affected authorised persons to another relevant AR, including the transfer of practising fees. Finally, it addresses ACCA's plans for winding-up all its regulatory activities in respect of non-contentious probate.
- 1.9 Terms and abbreviations used in this document appear in **bold** when they are first used. The Glossary in Chapter 9 explains the meanings of frequently used terms and abbreviations.

2. CANCELLATION OF DESIGNATION AS AN APPROVED REGULATOR

Designation as an approved regulator

- 2.1 ACCA became an AR in respect of probate activities under the Act, and was included on the list of ARs in the table in paragraph 1 of Schedule 4 to the Act, as a result of the Legal Services Act 2007 (Approved Regulators) Order 2009. ACCA is not an approved regulator for any other reserved legal activities.
- 2.2 ACCA's application to introduce regulatory arrangements for non-contentious probate activities was approved by the LSB on 18 January 2018. The regulatory arrangements included amendments to ACCA's Additional Practising Regulations for the United Kingdom, Jersey, Guernsey and Dependencies of the Isle of Man and the introduction of the Legal Activities Regulations 2018 (**LAR**), which came into effect on 1 March 2018.
- 2.3 ACCA commenced the authorisation of individuals and firms for probate activities on 1 April 2018. The LAR restrict authorisation to individuals and firms wishing to apply for a grant of probate or letters of administration only (ie non-contentious probate). ACCA does not authorise those wishing to oppose a grant of probate or letters of administration (ie contentious probate).

Review of probate regulation and recommendations

- 2.4 ACCA has, for some time, been considering how best to achieve its stated aim to diversify and innovate in relation to new service lines for practitioners.
- 2.5 In 2019, we reviewed our approach to probate regulation in England and Wales in order to assess how best to support our members in practice and provide the

greatest opportunity for our small- and medium-sized practices (**SMP**) who wish to undertake legal services, whilst managing the risks posed by changes in the regulatory landscape in this area.

- 2.6 Our discussions with ACCA's Practitioner Network Panel considered a range of matters and there was a clear desire that ACCA should endeavour to provide further opportunities for its practitioners to access the legal services market, but to do so in a cost-effective way.
- 2.7 The results and recommendations from the probate review were considered by ACCA Council on 19 September 2019 and Council approved:
- ACCA providing a pathway for eligible members to achieve probate (and other reserved legal activities) authorisation from CRL
- and
- ACCA relinquishing its AR status for probate in England and Wales and to ACCA fully exiting legal services regulation.
- 2.8 Following Council's decision and the development of a pathway with CRL, ACCA is now applying to the LSB to cancel its designation as an AR for the reserved legal activity of probate (non-contentious).

Rationale for de-designation as an approved regulator

- 2.9 For ACCA, very few practitioners hold probate authorisation and the number is unlikely to increase significantly in the future. Given the impact of the revised Internal Governance Rules (**IGR**), ACCA's continued recognition as an AR – and the obligations that flow from it – is not sustainable in the longer term and therefore we have sought an alternative approach which meets the needs of the members currently invested in this work or who would wish to engage in it in the future.
- 2.10 The approach approved by Council in September 2019 allows ACCA to meet its stated aim to diversify and innovate in relation to new service lines for SMP. By partnering with CRL, ACCA will be able to offer a pathway for eligible practitioners to achieve reserved legal activities authorisation beyond non-contentious probate work and, in turn, support practitioners to diversify their service offerings.
- 2.11 It also serves to provide a cost effective means by which to provide practitioners a pathway to reserved legal activities work while guarding against the risk that the new obligations imposed by the LSB through the IGR will detract ACCA from focussing on its core activities.

2.12 The rationale for Council's decision is explained in more detail below:

Regulated population

2.13 The take-up of authorisations for probate has been disappointing. At the time of submitting this application, ACCA authorised 99 individuals and 78 firms. While the number of authorised persons has continued to increase since September 2019, the prospect of ACCA's probate practitioner population growing significantly in the future is low and there remains uncertainty by members about whether sufficient new business will be acquired to make training and application (and compliance) worthwhile.

2.14 In addition, ACCA is currently only able to authorise firms where all the principals are 'lawyers' (ie authorised for probate or other reserved legal activities). Where this is not the case, firms would require a 'licence' to operate as an alternative business structure (**ABS**). There is therefore an argument that ACCA would need to gain recognition as a licensing authority (**LA**) for ABS and expand the range of reserved legal activities authorisations (such as the administration of oaths) if it is truly to open up the legal services market to its practitioners. This would take considerable time and additional costs for ACCA and there remains inherent uncertainty regarding the demand from firms.

Changes to the Internal Governance Rules

2.15 As an AR, ACCA must comply with the regulatory requirements stipulated by the LSB. The implementation of revised IGR in July 2019 has changed the regulatory environment and increased the risks faced by ACCA in continuing as an AR. The new IGR aims to enhance the separation and independence of the regulatory functions within the current legislative framework. Among other things, the IGR requires an AR's regulatory body to:

- ensure that the regulatory functions are not prejudiced by its representative functions
- determine the most appropriate way in which to discharge its regulatory functions, including determining its own governance, structure, priorities and strategy
- have a majority of lay members and a lay Chair on its governing board; the definition of lay under the IGR is a 'non-lawyer' whereas for ACCA this is 'non-accountant'

and

- formulate its own budget in accordance with its priorities and strategy and to determine the allocation of resources.
- 2.16 ACCA has assessed its existing procedures and practices in relation to the revised IGR. The new rules impact on ACCA's governance arrangements and require bespoke arrangements to be put into place to enable ACCA to comply with them. While the new IGR does not require an AR's regulatory body to be structurally separate from its representative body, that is the LSB's preferred regulatory model and it does not suit ACCA's arrangements. The changes ACCA would be required to make to its current regulatory arrangements in order to ensure full compliance with the revised IGR would therefore be wholly disproportionate to the risk and size of our regulated population.
- 2.17 We believe it would be unreasonable to allow the regulation of probate services to drive ACCA's regulatory governance arrangements more generally. As a result, ACCA has applied for, and been granted, authorisation from the LSB under Rule 16(1)(c) (Saving Provisions) of the IGR to remain non-compliant with the IGR until 30 September 2021 on the premise that ACCA will exit probate regulation at the end of the year.

Cost of regulation

- 2.18 Whilst not a primary driver in the consideration to cancel our designation, there are costs associated with ACCA's recognition as an AR. In addition to the levies payable to the LSB and Legal Ombudsman (**LeO**) (£8,000 per annum currently), there are costs associated with the regulatory framework for probate. These costs are not easy to separately identify but would include costs in respect of ACCA's interactions with complainants, authorised firms and the LeO (in assessing and investigating relevant complaints) and in respect of training compliance officers in probate, and designing a methodology for risk-assessing firms providing legal services and monitoring their work.
- 2.19 Moreover, there are costs in respect of probate regulation in terms of staff resources. ACCA has built and maintained relationships with the LSB, the LeO, the Competition and Markets Authority (**CMA**), and other legal services regulators. These relationships have (to a great extent) focused on the LSB's regulatory performance standards, but also on specific projects, including pricing transparency, diversity and the meetings have involved senior ACCA staff and the Chair of the Regulatory Board. This, for ACCA, is against a backdrop that we only authorise individuals and firms for non-contentious probate activities, which is considered to be a low-risk activity and for which take up has been low.

- 2.20 If ACCA is to truly open up the legal services market to its practitioners, ACCA would need to gain recognition as an LA for ABS and other reserved legal activities (for example, the administration of oaths). There would be costs associated with the achievement of such recognitions and sufficient ongoing resources would need to be deployed to maintain the necessary regulatory framework for authorised persons and in meeting ACCA's obligations as an AR and LA for what will be a comparatively small number of members. Therefore, the regulatory costs burden will need to be borne by ACCA's membership as a whole as opposed to its probate practitioners.
- 2.21 Perhaps most crucially, given the stated intent of the revised IGR to enhance the separation and independence of the regulatory functions, ACCA would need to change its regulatory governance arrangements to fully comply with the IGR and satisfy the LSB, particularly if ACCA were to achieve recognition for other reserved legal activities and as an LA.

CILEx Regulation pathway

- 2.22 ACCA has experience of working in partnership with other regulators to provide the widest opportunities to our members and maximise the benefits available to them. For example, we recently partnered with the Insolvency Practitioners Association to provide a pathway for our members to become insolvency practitioners and undertake insolvency work.
- 2.23 In this context, ACCA therefore considered whether a similar partnership with another AR could provide a pathway for eligible members to achieve probate (and other reserved legal activities) authorisation whilst reducing the future risks to which ACCA is exposed to.
- 2.24 ACCA explored this possibility with a number of legal services regulators and believed that CRL would be a suitable partner as its values and ambitions align to those of ACCA. In particular, CRL has specialist experience of regulating conveyancing and probate practitioners who are not Chartered Legal Executives, and has also regulated Associate Prosecutors for the Crown Prosecution Service.
- 2.25 From August 2019, ACCA entered into discussions with CRL around developing a pathway for eligible ACCA practitioners to not only achieve probate authorisation but also other reserved legal activities authorisation. We have worked closely with CRL and our stakeholders to refine and finalise the proposals to provide a route for the regulation of ACCA probate practitioners and firms, culminating in CRL's submission of a [Rule Change application](#) to the LSB on 23 July 2021. The application was approved by the LSB and the [Decision Notice](#) was published on 19 October 2021.

- 2.26 CRL's Rule Change Application set out the proposed route for the regulation of ACCA probate practitioners and firms. This will be achieved by the creation of a new class of individual – **CILEx Practitioner (ACCA-Probate)** – and a new type of entity – the **CILEX-ACCA Probate Entity**. This new form of entity regulation largely mirrors the existing approach to the regulation of ACCA probate firms and changes have only been made where it is in the interests of the consumer to do so, for example professional indemnity insurance (**PII**).
- 2.27 Where a CILEX-ACCA Probate Entity wishes to expand into other areas of reserved legal work, they may become authorised as a **CILEx Authorised Entity** and subsequently licensed as a **CILEx ABS**, in accordance with CRL's rules. This would enable existing ACCA firms to operate both accountancy and legal activities within a single firm regulated by CRL.
- 2.28 It should be noted that the creation of these routes will not preclude ACCA probate practitioners from applying for probate regulation from other legal services providers.

Alternative courses of action considered

- 2.29 ACCA considered and explored alternative courses of action besides cancellation of designation, such as delegating its regulatory functions to CRL. However, we have chosen not to pursue this option as ACCA would have retained the power to authorise individuals and firms for probate and the risks that flow from maintaining its status as an AR.
- 2.30 We believe that the pathway we have developed with CRL will enhance the member value proposition for interested members, without increasing the risk exposure of ACCA. However, the development of this pathway and our decision to fully withdraw from probate regulation have inevitably put ACCA on a course to cancel its designation as an AR.

Affected authorised persons

- 2.31 There are 99 individuals and 78 firms authorised by ACCA to undertake non-contentious probate activities who will be affected by ACCA's withdrawal from probate regulation and the cancellation of its designation as an AR. Effective from 22 October 2021 we ceased to accept new applications for probate authorisation.

Stakeholder engagement

- 2.32 In spring 2020, ACCA engaged with the Practitioner Network Panel and key probate practitioners on Council's decision to withdraw from probate regulation. On 5 June 2020, we issued an *Exploring Options* communication to these practitioners explaining the impact of recent changes in the regulatory environment for legal services in England and Wales, and our decision to partner with the Chartered Institute of Legal Executives (**CILEX**) and CRL to provide a pathway for eligible ACCA practitioners to achieve legal services authorisation, diversify their service offerings, and access a range of support services.
- 2.33 The *Exploring Options* communication was subsequently issued to all ACCA probate practitioners on 23 July 2020, and published in the *In Practice* newsletter for UK practitioners on 4 August 2020. The Authorisation team have provided specific information on ACCA's withdrawal from probate in the confirmation letters issued to all new probate authorisations from August 2020.
- 2.34 CRL conducted a consultation on its proposal to become the regulator of ACCA firms for the reserved activity of probate. The consultation ran from 12 August 2020 to 7 October 2020, and CRL received six responses. ACCA probate practitioners were invited to comment but there were no responses from them.
- 2.35 To provide an opportunity to engage further with ACCA probate practitioners on the proposed pathway with CRL, ACCA and CRL held a roundtable event on 16 October 2020. This gave all ACCA probate practitioners the opportunity to submit questions prior to the event as well as ask questions of ACCA and CRL staff. There were also representatives from CILEX, Lockton and BARBRI Altior present to answer questions on specific areas, such as support services, PII, and education and training.
- 2.36 While some ACCA probate practitioners expressed concern about ACCA's withdrawal from probate, the majority were supportive of our decision and understood the rationale for it. In particular, our members welcomed the greater opportunities that the proposed pathway with CRL will offer them whilst limiting the risks posed to ACCA.
- 2.37 ACCA and CRL jointly considered the feedback from external stakeholders and, where specific issues were raised within the consultation responses, CRL explained these in its consultation response. Where appropriate, CRL incorporated the responses, concerns and suggestions into its final Rule Change application and the **CILEx Regulation-ACCA Handbook 2021**. The Probate Roundtable Q & A responses can be found at **Appendix 1**.

- 2.38 On 27 October 2020, ACCA issued an extension notice to all ACCA probate practitioners confirming that existing probate authorisations would be extended into 2021 until the date of transfer to CRL was confirmed by ACCA. Firms were not required to complete an annual renewal for 2021 and there was no additional charge for the extension.
- 2.39 On 27 September 2021 we updated ACCA probate practitioners on our plans to withdraw from legal services regulation and the options that will be available to them. We are now undertaking preparatory work with CRL on the transfer arrangements while the LSB considers CRL's Rule Change application.
- 2.40 Further communications will be issued in the period October to December 2021 to prepare affected authorised persons for the transfer and ACCA's withdrawal from probate at the end of the year. In order to prevent any regulatory gaps arising, we will ensure that ACCA probate practitioners have the opportunity to make a timely decision on the options available to them and that ACCA is informed of the option they have chosen. In addition, our communications will make clear to the affected authorised persons that they must ensure they are appropriately authorised to undertake probate activities when their current authorisation with ACCA ends on 31 December 2021, or cease undertaking probate activities.

Regulatory objectives

- 2.41 In preparing this application, ACCA has considered how it will impact on the achievement of the regulatory objectives. Overall, we have not identified any adverse impacts upon any of the objectives as a result of the cancellation of our designation as an AR for non-contentious probate.
- 2.42 A more detailed assessment of how the CRL pathway will support the regulatory objectives is set out below:

Protecting and promoting the public interest

- 2.43 The CRL pathway will maintain effective, transparent and proportionate regulations and regulatory arrangements for ACCA members and firms undertaking probate activities. As far as reasonably possible, the regulatory arrangements replicate ACCA's existing arrangements for probate. This ensures high standards of practice and ethical conduct and protects the public interest.
- 2.44 The CRL pathway will offer wider routes to authorisation for **ACCA Accountancy Practices**. This ensures consistency and continuity for ACCA members and firms currently offering probate services, leverages the potential for growth, and meets the wider demand for legal services. The increased diversity of those authorised to

provide probate services ensures that consumer needs are met and serves to promote the public interest.

Improving access to justice

- 2.45 Eligible ACCA members and firms will continue to have a route to achieve probate (and other reserved legal activities) authorisation. This increases competition in the provision of legal services and improves the supply of competent, trusted persons available to provide these services.

Protecting and promoting the interests of consumers

- 2.46 Consumers will continue to access probate services through their engagement with ACCA members and firms authorised for probate with CRL, either as a CILEX-ACCA Probate Entity, CILEX Authorised Entity or CILEX ABS. The CRL pathway will enable a convenient, more accessible point of entry to legal services.
- 2.47 ACCA practitioners undertaking probate activities through the CRL pathway are in a position to be able to offer a high standard of service in probate work to both existing clients and potential clients. The interests of consumers will continue to be promoted through wider choice and the continuity of service that clients receive from their accountants in respect of their (and their families') financial affairs.
- 2.48 The specific requirements for CILEX-ACCA Probate Entities to comply with price and transparency rules will ensure a more transparent and competitive regulatory environment. This empowers the consumer to better understand their options in instructing a legal adviser.
- 2.49 The increase in minimum cover required for PII to £500k will bring the standards for CILEX-ACCA Probate Entities in line with comparable offerings in the legal services sector. This ensures that consumer protections are sufficient and available.

Promoting competition in the provision of services

- 2.50 The CRL pathway will introduce a new route to become authorised as a CILEX-ACCA Probate Entity. This provides an opportunity for ACCA probate practitioners currently participating in the legal services market to continue to offer probate services to clients and allows the authorisation of more CILEX-ACCA Probate Entities in the future. The provision of a variety of authorisation options ensures healthy competition and improves access to reserved legal activities.
- 2.51 ACCA practitioners will be offered the choice to explore a variety of options for probate authorisation with CRL or seek regulation from an alternative legal services

regulator. This broadens the authorisation options available to the profession and enhances competition in an evolving professional services environment.

- 2.52 The option to become licensed as a CILEx ABS will enable ACCA practitioners to benefit from increased innovation, more collaborative working practices, and greater room for expansion. This allows for greater competition at the confluence of professional services.
- 2.53 The CRL pathway will at least maintain the number of entities operating in the sector, and it is hoped that more ACCA practitioners will consider carrying on reserved probate work in the future. It may also be possible for them to expand the scope of their legal services offering through the opportunities afforded by CRL.
- 2.54 The mandatory transparency requirements for CILEX-ACCA Probate Entities will help facilitate increased competition in the sector. This enables greater consumer choice and confidence.

Encouraging an independent, strong, diverse and effective legal profession

- 2.55 The advantages of increased diversity in the providers of legal services – allowing accountants to provide legal services that are complementary to existing public practice services – are clear. The CRL pathway will preserve the link of an ACCA Accountancy Practice to its reserved legal work, while improving consumer protections and operational effectiveness.
- 2.56 Authorised persons operating in a CILEX-ACCA Probate Entity will be bound by the **CILEX-ACCA Code of Conduct**. This ensures greater professional standards, while independence and effectiveness are safeguarded by existing rules. The enforcement of high standards will encourage a strong and effective legal profession.
- 2.57 The CILEX-ACCA Probate Entity will be required to be an independent legal entity. This ensures an appropriate level of independence from the ACCA Accountancy Practice, while mandating an appropriate delegation of responsibility to rest with either the CILEX-ACCA Probate Entity or the ACCA Accountancy Practice, respectively. For example, responsibility for anti-money laundering supervision will be retained by the ACCA Accountancy Practice, while the CILEX-ACCA Probate Entity will be prohibited from holding client money.
- 2.58 ACCA practitioners will have the option to become authorised as a CILEx Authorised Entity. This makes available alternative routes to authorisation, and increases the options available to those wishing to practice. Although there will be diversity of options available with regards to authorisation, the strength, effectiveness and independence of the legal profession will not be diminished.

- 2.59 ACCA practitioners will also have the option to become licensed as a CILEx ABS. This allows firms to benefit from more effective operation of their professional services offerings, an increased focus on the gains achievable from diverse offerings, and increased opportunities for innovation.
- 2.60 Individuals who have satisfied ACCA's existing qualification requirements for probate authorisation will be offered qualification exemptions by CRL. This ensures a diversity of professional experience in the delivery of probate activities. In addition, maintaining strict adherence to Codes of Conduct ensures effectiveness and prevents the erosion of standards.

Promoting and maintaining adherence to the professional principles

- 2.61 ACCA members will continue to be required to comply with the ACCA Code of Ethics and Conduct, which includes the five fundamental principles of integrity, objectivity, professional competence and due care, confidentiality, and professional behaviour. These principles are well-established and articulated in such a way as to encompass all the professional principles in section 1(3) of the Act.
- 2.62 ACCA has worked with CRL to develop the CILEx Regulation-ACCA Handbook 2021 to avoid any occurrences of inconsistency of regulatory practice. We will supplement this with guidance for affected authorised persons to promote and maintain adherence to professional principles.

Impact assessments

Approved regulators, other appropriate regulators and consumers

- 2.63 ACCA considers that there will be no adverse impact on other ARs, appropriate regulators, or consumers. Our probate practitioners will have a choice to move to CRL or another AR. Indeed, following the announcement of ACCA's decision to withdraw from probate, some ARs have directly contacted them about changing regulator.
- 2.64 Other ARs, appropriate regulators and consumers were invited to comment on CRL's proposals to regulate CILEX-ACCA Probate firms and their impact. There were six responses, including the Legal Services Consumer Panel, BARBRI Altior, the Council for Licensed Conveyancers and ICAEW. An analysis of the ACCA consultation responses is attached at **Appendix 2**.

Equality, diversity and inclusion

- 2.65 ACCA has not collected equality, diversity and inclusion (**EDI**) data on our regulated population, although data is available for the protected characteristics of age and gender. As a result, it is not possible to assess the full impact on affected authorised persons in terms of EDI.
- 2.66 The key changes for ACCA probate practitioners who choose to transfer to the CRL pathway relate to:
- requiring a limited company or LLP to be established to create a separate entity to conduct probate activities
 - increasing minimum PII cover
 - compliance with the transparency rules
 - additional regulatory submissions to CRL on the running of the firm.
- 2.67 The consequence of these changes may be an increase in costs, which may disproportionately impact on females and those in part-time employment. However, ACCA considers that these costs are in line with those currently incurred by our probate practitioners and the changes are proportionate and fair.

Regulatory arrangements

- 2.68 ACCA considers the impact on the regulatory arrangements for affected authorised persons is minimised by the creation of a pathway with CRL which mirrors (as far as possible) our current approach to probate regulation. Where there are changes to the regulatory arrangements, these have only been created in the interests of consumer protection.
- 2.69 The CRL pathway provides a proportionate, safe and cost-effective replacement for the regulation of existing and potential ACCA probate practitioners to enable them to continue to offer probate activities and participate in the legal services market. However, as previously stated in this application, it is not the only option available to them.

3. PROPOSED TRANSFER ARRANGEMENTS

Transfer of regulation

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

- 3.2 In **Appendix 3**, we provide more detailed information on the proposed transfer arrangements, including how ACCA and CRL will work together to manage the process of firms looking to move to CRL, and who will take responsibility for specific actions.

Choice of regulator

- 3.3 ACCA is committed to ensuring that the transfer arrangements are communicated to all affected authorised persons, and that they are provided with guidance and support to make timely and informed decisions on the options available to them.
- 3.4 On 27 September 2021 we wrote to all affected authorised persons to advise them of ACCA's intention to withdraw from legal services regulation on 31 December 2021 and that their ACCA authorisation for non-contentious probate work will cease on this date. We informed them that, in advance of ACCA's withdrawal from probate, affected authorised persons will be required to choose one of the following three options:

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

We also stressed that affected authorised persons must ensure they are appropriately authorised to undertake probate activities when their current authorisation with ACCA ends on 31 December 2021, or cease undertaking probate activities.

CILEx Regulation pathway

- 3.5 The CRL pathway enables ACCA probate practitioners to continue to offer probate as an ancillary activity to their accountancy work under a similar regulatory framework to that currently offered by ACCA. However, affected authorised persons will have the opportunity to make their own decision as to their future regulator if they wish to continue to offer probate services. There is **no** requirement for them to choose CRL and we are aware that other ARs have already approached our firms.
- 3.6 CRL has consented to the transfer and will manage the onboarding process for those affected authorised persons that opt to transfer to them. This will enable CRL to collect all the required information directly from the individuals and firms within the agreed timeframes. It will also provide certainty to ACCA as to the affected authorised persons who are progressing applications with CRL. Affected authorised

persons will be invited to make an application to CRL for the separate probate entity via a dedicated CRL portal. Applications must be submitted by 30 November 2021.

- 3.7 Whilst an ACCA probate firm's authorisation with ACCA will run until 31 December 2021, ACCA and CRL have suggested a deadline of 30 November 2021 to submit an online application in order to enable the processing of all applications for commencement of authorisation as a CILEX-ACCA Probate Entity prior to 1 January 2022.
- 3.8 ACCA and CRL will provide guidance and support to affected authorised persons on the transfer arrangements, the requirements for admission to CRL, and the application process. We have worked with CRL to develop the CILEx Regulation-ACCA Handbook 2021 to maintain consistent regulatory practices. We are also working with them to develop resources to support firms in communicating how they are regulated and the protections that are available to a consumer. We hope to announce the details for existing ACCA firms to transfer to CRL in the next week.

Regulatory gaps and enforcement

- 3.9 ACCA will carefully manage the transfer of all affected authorised persons to other regulatory bodies in order to prevent any regulatory gaps and ensure that probate practitioners do not continue to practise, unregulated. We will make clear to affected authorised persons that their authorisation by ACCA to undertake non-contentious probate work will cease on 31 December 2021. We will also stress in all communications to affected authorised persons, including the Notice of Cancellation, that they **must** take action by this date. There is no 'do nothing' option.
- 3.10 The published deadline for applications to CRL of 30 November 2021 allows for some slippage to enable the processing of all applications before ACCA winds up its probate regulatory activities on 31 December 2021.
- 3.11 Any ACCA member who continues to carry out probate activities, unregulated, after 31 December 2021 will be in breach of ACCA's Bye-laws, regulations and Code of Ethics and Conduct (or for a non-ACCA member, the regulations of their professional accountancy body) and will be subject to regulatory and disciplinary enforcement action.
- 3.12 The practice of a reserved legal activity, unregulated, may also constitute criminal offences under sections 14-17 of the Act and be subject to criminal prosecution resulting in imprisonment or a fine. As with other regulated / reserved activities, ACCA can take regulatory and disciplinary enforcement action against its members under ACCA's regulations for undertaking activities without holding the necessary authority but we do not have the authority to prosecute criminal offences. Therefore, as with other breaches of statutory legislation, responsibility for criminal enforcement

of a breach of section 14 of the Act would rest with law enforcement agencies and the relevant prosecuting authority. However, as part of our assessment of evidence in each case, we would consider whether a private prosecution under section 14 of the Act would be an appropriate and proportionate course of action for ACCA to take. In our communications to affected authorised persons, we will draw attention to the consequences of practising a reserved legal activity, unregulated, and the regulatory and disciplinary action that ACCA will take against them in this scenario.

- 3.13 ACCA has established Standard Operating Procedures which include a formal mechanism for sharing information of regulatory and disciplinary action taken against ACCA members with other regulators and law enforcement agencies. These procedures will ensure that ACCA shares information of regulatory and disciplinary action taken against ACCA members authorised for probate by CRL or another AR, and/or a section 14 offence, where the evidence supports it, with other regulators and the LSB. This will include the reporting of any instances of probate activities continuing to be conducted by ACCA members who have not transferred to another AR for probate activities.

Evaluation and monitoring

- 3.14 In order to prevent regulatory gaps and avoid the need for enforcement action, whether regulatory or criminal, ACCA and CRL will evaluate and monitor the transfer of affected authorised persons. We will require all affected persons to inform us of the option they have chosen.
- 3.15 ACCA and CRL will communicate regularly throughout the transfer process and thereafter in order to:
- (a) assess the number of firms that
 - wish to be authorised by CRL as a CILEX-ACCA Probate Entity or a CILEx Authorised Entity
 - choose authorisation by another AR
 - cease carrying out probate activities
 - (b) monitor year on year change in number of CILEX-ACCA firms
 - (c) monitor the number of ACCA firms that become a CILEx Authorised Entity
 - (d) collect and analyse EDI data
 - (e) monitor and reconcile ACCA individuals with practising certificates to CRL's list of authorised practitioners.
- 3.16 ACCA will provide a report to the LSB after the end of the transfer deadline of 30 November 2021 on the number of affected authorised persons that have transferred to CRL, or confirmed they intend to apply for authorisation with another legal service regulator or cease probate activities by 31 December 2021. The report will also

explain the measures ACCA will take in respect of those affected authorised persons that have not transferred in order to mitigate the risk of regulatory gaps.

Tripartite Memorandum of Understanding

- 3.17 ACCA, CRL and CILEX have established a tripartite Memorandum of Understanding (**MoU**) to deal with all matters associated to CILEX-ACCA Probate Entities and the accountancy professionals working within them. The tripartite MoU also deals with any inconsistency in regulatory practice related to the separation of work for firms, and the parties to the tripartite MoU. The tripartite MoU was signed on 21 October 2021 and a copy is provided at **Appendix 4**.
- 3.18 The tripartite MoU is supported by a Data Sharing Agreement (**DSA**) which sets out in more detail the exchange of information related to ACCA members and firms.
- 3.19 Following the transfer, ACCA will continue to work closely with CRL and CILEX to refine the working arrangements set out in the tripartite MoU and the DSA, and address any issues that may arise.

Framework Memorandum of Understanding

- 3.20 ACCA is currently a party to the *Framework Memorandum of Understanding (1 March 2019)* that helps the legal services regulators to work collaboratively in exercising their public functions and to meet the needs of consumers. The Framework Memorandum of Understanding does not override the tripartite MoU and the DSA that have been agreed between ACCA, CRL and CILEX. Once the tripartite MoU and the DSA are in place and ACCA has withdrawn its regulatory arrangements for probate, we intend to withdraw from the Framework Memorandum of Understanding.

Resolution of regulatory conflict with other regulatory regimes

- 3.21 Section 54 of the Act places a duty on ARs to make reasonable provision to prevent external regulatory conflicts. Such a conflict may arise where an ACCA member or firm is regulated by CRL or another AR for the reserved legal activity of non-contentious probate, whilst the unreserved activities of estate administration services, and any unreserved activities associated with the practice of probate therein, are subject to our rules and regulations.
- 3.22 In the event of a regulatory conflict with CRL, ACCA and CRL will determine the best course of action on a case-by-case basis as governed by the tripartite MoU. In addition, specific provisions on regulatory conflict have been included in the CILEx Regulation-ACCA Handbook 2021 in order to satisfy the requirements of section 54 of the Act.

- 3.23 There will always remain a risk that the requirements of one regulator conflict with those of another. However, due regard for the regulatory principles by all parties serve to minimise that risk. In all such cases, ACCA would adopt a collaborative approach in order to achieve a proportionate and consistent outcome that satisfies all parties.

Complaints handling by firms

- 3.24 ACCA will work with CRL (and through CRL with the LeO) on ways to ensure clarity for the consumer on their rights to raise a complaint with the CILEx-ACCA Probate Entity or the ACCA Accountancy Practice, and to escalate a complaint to the relevant investigating body where it has not been resolved informally by the firm.
- 3.25 By requiring a CILEX-ACCA Probate Entity to be an independent legal entity, ACCA and CRL will ensure the separation of the regulation of the reserved legal activity of non-contentious probate from other estate management work. CRL will issue guidance for CILEX-ACCA Probate Entities on client care letters which must explain the relationship between the ACCA Accountancy Practice and the CILEX-ACCA Probate Entity, the separation of the work that will be carried out by each entity, and the complaints handling procedures.
- 3.26 ACCA members and firms regulated for probate by CRL will continue to be subject to first-tier complaints handling rules. The CILEX-ACCA Probate Entity must outline in the client care letter how the client can complain should they encounter a problem with the firm's probate work, including subsequent referral channels to the LeO (service complaints), CRL (complaints related to the conduct of the reserved legal activity of non-contentious probate), and ACCA (complaints related to the conduct of mainstream accountancy activities connected to the reserved legal activity of non-contentious probate). The client care letter should also refer to more detailed Complaints Handling Procedures which should be available on the firm's website.

Investigation of complaints

- 3.27 The LeO will continue to investigate **service** complaints relating to probate work undertaken by ACCA members and firms regulated for probate by CRL (or another AR). Service complaints that fall within the LeO's jurisdiction are not limited to the reserved legal activity of non-contentious probate and may cover some mainstream accountancy activities connected to the reserved legal activity of non-contentious probate, such as estate administration and taxation. The LeO has confirmed that a consumer will be able to be referred to them, whether the work is carried out in the CILEx-ACCA Probate Entity or the ACCA Accountancy Practice.

- 3.28 Complaints about the **conduct** of non-contentious probate work undertaken by ACCA members and firms regulated for probate by CRL (or another AR) will be investigated by CRL (or the relevant AR) and dealt with under their enforcement rules. Complaints that indicate potential misconduct by ACCA members and firms in other areas (including estate administration and taxation) will continue to be covered by ACCA. Our approach to dealing with the investigation and enforcement of conduct-related complaints is addressed in the tripartite MoU and the DSA. We will also provide information for consumers on our websites.
- 3.29 The tripartite MoU and the DSA provide a framework for cooperation, coordination and the sharing of information between the parties. This will ensure consumers fully understand the regulatory environment and the different roles of each organisation, and provide consumer protection and redress.

Transfer of amounts

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

4. WITHDRAWAL OF REGULATORY ARRANGEMENTS FOR PROBATE

Non-compliance with the Internal Governance Rules

- 4.1 ACCA has been granted authorisation by the LSB under Rule 16(1)(c) of the Saving Provisions to remain non-compliant with the IGR until 30 September 2021. However, given ACCA's clear intent to exit probate regulation by the end of 2021 and our application to cancel our designation as an AR, we have proposed that we do not make the required changes to our arrangements to support full compliance with the IGR beyond the deadline of 30 September 2021 to the date of our withdrawal from legal services regulation. The implementation of such changes would by their nature extend beyond the proposed date of transfer to CRL and ACCA's withdrawal from probate regulation at the end of the year.

Cessation of new applications for probate authorisation

- 4.2 ACCA ceased to accept new applications for probate authorisation on 22 October 2021. Individuals and firms seeking probate authorisation from this date onwards will be invited to make an application to CRL.

Application for alterations to ACCA’s regulatory arrangements for probate

- 4.3 ACCA has established regulatory arrangements for probate activities and the LAR are contained within the *ACCA Rulebook* within the UK annex to the Chartered Certified Accountants’ Global Practising Regulations 2003 (**GPR**).
- 4.4 ACCA intends to withdraw all regulatory arrangements for probate activities, effective 1 January 2022. Therefore, as part of this application for cancellation of our designation as an AR, ACCA is also applying for approval of alterations to its regulatory arrangements for probate, in order to give effect to our withdrawal from probate regulation and address concerns raised by the LSB about the potential for regulatory gaps.
- 4.5 ACCA is proposing to implement the following changes to the GPR, Annex 1, effective 1 January 2022:

Regulation	Reason for proposed change
GPR, Annex 1, regulation 2	Remove or amend definitions relating to legal activities
GPR, Annex 1, regulation 4(2)(b)	Amend the restrictions on individuals and firms carrying on reserved legal activities and address regulatory gaps
GPR, Annex 1, regulation 5(3)	Remove the qualification requirements to carry on a reserved legal activity
GPR, Annex 1, regulation 9(4)	Include a new regulation on the conduct of reserved legal activities (previously within the Legal Activities Regulations 2018)
GPR, Annex 1, Appendix 4	Remove the Legal Activities Regulations 2018

- 4.6 The table of tracked changes to the GPR, Annex 1 and Appendix 4 is provided in **Appendix 5**.

5. TIMETABLE

- 5.1 This application is made with a view to ACCA withdrawing from probate regulation on 31 December 2021, given the lead times for approval of applications by the LSB.
- 5.2 The key milestones for the proposed transfer of affected authorised persons, the cessation of all regulatory arrangements relating to probate, and the cancellation of ACCA’s designation as an AR for probate are set out below:

Date	Activity / milestone
27 September 2021 to 31 December 2021	ACCA issues series of communications to affected authorised persons
21 October 2021	ACCA, CRL and CILEX sign tripartite MoU
22 October 2021	ACCA submits final application for cancellation of designation as an AR for probate to the LSB
22 October 2021	ACCA ceases to accept new applications for probate authorisation
30 November 2021	Affected authorised persons apply to transfer to CRL, or confirm they intend to apply for authorisation with another AR or cease probate activities by 31 December 2021
31 December 2021	ACCA ceases to authorise individuals and firms for probate
31 December 2021	ACCA ceases to regulate non-contentious probate activities and withdraws the LAR
Date to be confirmed	LSB recommends to the Lord Chancellor that an order be made to cancel ACCA's designation as an AR for probate
2022	Lord Chancellor approves order to cancel ACCA's designation as an AR for probate

6. PRESCRIBED FEE

- 6.1 In accordance with rule 9, this application is accompanied by the prescribed fee of £6,000 in respect of the cancellation of **all** of the reserved legal activities regulated by ACCA.
- 6.2 ACCA understands that rule 11 makes provision for LSB to charge additional fees at the end of the assessment process if extra costs are incurred where further information is requested from ACCA and/or the LSB seeks external advice.

7. NOTICE REQUIREMENTS

- 7.1 In accordance with rule 12, ACCA will publish a cancellation notice on its website on the same day on which this application is submitted to the LSB. A copy of the cancellation notice is provided in **Appendix 6**.
- 7.2 ACCA further undertakes to publish the cancellation notice on CRL's website and in the accountancy trade press, including relevant ACCA journals and newsletters, within five working days of this application being submitted to the LSB.

8. CONTACT DETAILS

8.1 Further information in respect of this application may be obtained by contacting:

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9. GLOSSARY OF TERMS AND ABBREVIATIONS

9.1 In this application, unless the context otherwise requires:

ABS	alternative business structure
ACCA	the Association of Chartered Certified Accountants
ACCA Accountancy Practice	a firm that continues to be regulated by ACCA for accountancy work, and upon which the existence of the CILEX-ACCA Probate Entity is contingent
the Act	the Legal Services Act 2007
affected authorised person	an authorised person who is regulated by ACCA for non-contentious probate
AR	approved regulator; has the meaning given in section 20(2) of the Act

authorised person	has the meaning given in section 18 of the Act
CILEX	the Chartered Institute of Legal Executives; the Approved Regulator named in the Legal Services Act 2007, and the professional body representing Chartered Legal Executives and other CILEX members
CILEx ABS	an entity authorised to become an alternative business structure under the CRL licensing rules
CILEX-ACCA Code of Conduct	the code, which mirrors the CILEX Code of Conduct, which governs the standards by which CRL assesses the conduct of individuals (CILEx Practitioner (ACCA-Probate)) and firms (CILEX-ACCA Probate Entity)
CILEX-ACCA Probate Entity	a new class of entity created to describe the situation whereby the conduct of probate activities, currently undertaken by an ACCA Accountancy Practice, is performed by a unique legal entity under the supervision of CRL
CILEx Authorised Entity	an entity authorised by CRL to conduct reserved legal work
CILEx Practitioner (ACCA-Probate)	an authorised ACCA-Probate individual
CILEx Regulation-ACCA Handbook 2021	the rules covering the actions of a CILEX-ACCA Probate Entity
CMA	the Competition and Markets Authority
CRL	CILEx Regulation; the independent regulatory body for CILEX, regulating Chartered Legal Executives, CILEx Practitioners, Chartered Legal Executive Advocates, Associate Prosecutors and other CILEX members

DSA	data sharing agreement
EDI	equality, diversity and inclusion
GPR	the Chartered Certified Accountants' Global Practising Regulations 2013
IGR	the LSB's Internal Governance Rules
MoU	memorandum of understanding
LA	licensing authority; has the meaning given in section 73(1) of the Act
LAR	the Legal Activities Regulations 2018
LeO	the Legal Ombudsman
LSB	the Legal Services Board
PII	professional indemnity insurance
reserved legal activity	has the meaning given in section 12 of and Schedule 2 to the Act
SMP	small- and medium-sized practices

10. APPENDICES

10.1 The following enclosures form part of this application:

Appendix	
1	ACCA Probate roundtable Q&A analysis
2	ACCA consultation analysis
3	Process for the transfer of existing ACCA Probate firms to CRL
4	CRL-CILEX-ACCA MoU and DSA 211021
5	2 02 GPR, Annex 1 and Appendix 4 (effective 01.01.22) – Table of Changes
6	Notice – Cancellation of ACCA's designation as an approved regulator for probate