

# Guidance for Admissions and Licensing Committee



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## Introduction

1. The purpose of the "Guidance for hearings before the Admissions and Licensing Committee" ('the Guidance') is to assist the Admissions and Licensing Committee ('ALC') in the exercise of its powers, and to assist members, firms, affiliates and registered students in understanding the hearing process and procedure before the ALC.
2. The Guidance is for use by:
  - the ALC and its legal advisor, to provide guidance on the process and procedure in relation to hearings before the Committee;
  - ACCA members, firms, registered students or non-members who are involved in hearings before the ALC, to assist in understanding the hearing process and procedure before the ALC;
  - ACCA staff involved in the conduct and administration of hearings before the ALC as a source of reference.
3. The Guidance is a 'living document' which will be updated and revised when the need arises.
4. Nothing in this document should be treated as a source of legal advice to any user of the guidance. When appropriate, the independent Legal Adviser will advise the Committee on questions of law, including questions about the use of this guidance. Relevant persons are recommended to obtain their own legal advice.
5. Reference will be made in the Guidance to the following Regulations:
  - i. The Chartered Certified Accountants' Membership Regulations 2014 ('MR');
  - ii. The Chartered Certified Accountants' Global Practising Regulations 2003 ('GPR');
  - iii. The Chartered Certified Accountants' Designated Professional Body Regulations 2001 ('DPBR');
  - iv. The Chartered Certified Accountants' Irish Investment Business Regulations 2013 ('IIBR');
  - v. The Chartered Certified Accountants' Authorisation Regulations 2014 ('AR');
  - vi. The Chartered Certified Accountants' Appeal Regulations 2014 ('Appeal Regulations');
  - vii. The Chartered Certified Accountants' Interim Orders Regulations 2014 ('IOR');
  - viii. The Chartered Certified Accountants' Health Regulations 2014 ('HR').

## **Purpose and function of the Admissions and Licensing Committee ('the ALC')**

6. The purpose of the ALC is to implement the regulatory function of ACCA in relation to its members, firms and the accountancy profession as a whole by determining applications or deciding the most appropriate regulatory action in light of the information it has before it. Its role is distinct and discrete from that of the Disciplinary Committee ('DC') whose purpose is to adjudicate on disciplinary matters arising from misconduct, criminal conviction or regulatory breaches and make the appropriate and proportionate order.
7. The ALC's function includes:
  - determining applications to become a member or registered student under MR 9(1);
  - determining applications to remain a member, affiliate or registered student following a bankruptcy event under MR 13(1)(b);
  - determining applications for readmission to ACCA under MR 14(1);
  - determining an applicant's eligibility to hold a practising certificate under AR 3(1);
  - determining an applicant's suitability to hold an audit qualification under AR 3(1);
  - determining applications by a firm to hold an audit certificate under AR 3(1);
  - determining re-applications for certificates under AR 3(11);
  - determining the appropriate regulatory action to take where one or more of the gateways under AR 5(2) are engaged;
  - withdrawing a certificate on the grounds specified under AR 5(1);
  - determining referrals regarding decisions of the Regulatory Assessor under AR 7(7)(a) or AR 7(7)(c);
  - determining waiver applications under one or more of the regulations set out in Schedule 1.

## Matters where hearings are required before the ALC

8. The following circumstances will require a public hearing before the ALC:
- i. Where the ALC is making a decision to withdraw or suspend a certificate under AR 5(1) or 5(2);
  - ii. Contentious applications made pursuant to AR 3(1) or 3(11) (non-contentious applications, including where ACCA adopt a neutral position, are typically considered by the Chairman of the ALC in the absence of the parties and without a hearing (AR 3(2)(a)), subject to paragraph 8(iii) below;
  - iii. Where the ALC or the Association determines at any stage that a hearing is required in the interests of justice under AR 3(2) in any of the following applications:
    - (i) Non-contentious applications including re-applications for certificates under AR 3(1) or AR 3(11);
    - (ii) applications to become a member or registered student under MR 9(1);
    - (iii) applications for readmission as a member or registered student under MR 14;
    - (iv) waiver applications brought under one or more of the regulations listed in Schedule 1 (AR 14).
  - iv. Where an individual who becomes the subject of a bankruptcy event applies to remain a member, affiliate or registered student under MR 13(1)(b) ('bankruptcy applications') (MR 13(4));
  - v. Where the holder or former holder of a certificate seeks referral of his case to the ALC for consideration where he disagrees with the decision of the Regulatory Assessor in accordance with AR 7(7)(a);
  - vi. Where ACCA seeks referral of a case to the ALC for consideration where it disagrees with the decision of the Regulatory Assessor in accordance with AR 7(7)(c).

### **Applicable provisions at hearings before the ALC**

Types of hearing	Applicable Provisions
Withdrawal of, suspension of, or imposition of conditions on a certificate under AR 5(1) or AR 5(2).	AR 6, and the provisions set out at Regulations 8 to 16 may also apply.
Applications including reapplications for certificates under AR 3(1) or AR 3(11) Applications for membership or readmission under MR 9(1) or MR 14(1) Bankruptcy applications under MR 13(1)(b)	AR 3, and the provisions set out at Regulations 8 to 16 may also apply. AR 3, and AR 8 to AR 16 may be adapted as necessary so reference is made to an application under MR 9(1), MR 14(1) or MR 13(1)(b). The applicability of AR 3 to such applications is subject to any express provision which conflicts with the Membership Regulations.
Referral to the ALC regarding decision of the Regulatory Assessor under AR 7(7)(a) or 7(7)(c)	AR 6, and the provisions set out at Regulations 8 to 16 may also apply.

## Burden and standard of proof

9. In matters and applications brought on behalf of ACCA, the burden is on ACCA to satisfy the ALC of the conduct and/or breach alleged, and/or that the application is made out. The standard of proof is the civil standard i.e. to the balance of probabilities.
10. In applications, reapplications or referrals on behalf of an individual or firm, the burden is on the individual or firm to satisfy the ALC that the grounds of the application, reapplication or referral are made out. The standard of proof is the civil standard i.e. to the balance of probabilities.

## Notice of hearing

### ***Hearings convened under AR 6***

11. In relation to hearings convened under AR 6, the hearings officer will send the Notice of Hearing in accordance with AR 6(1) at least 28 days prior to the hearing date.
12. A Notice of Hearing served in accordance with AR 6(1) must include the following information (AR 6(1)(b)):
  - i. the date, time and place fixed for the hearing of the case;
  - ii. the matter(s) under consideration;
  - iii. the evidence on which ACCA intends to rely, including documentary evidence and/or witnesses or letters;
  - iv. the relevant person's right to attend the hearing and be represented;
  - v. the power of the ALC to proceed in the absence of the relevant person at the hearing;
  - vi. the relevant person's right to cross-examine any witnesses called by ACCA and to call his own witnesses;
  - vii. a requirement that the relevant person must notify ACCA 21 days prior to the hearing whether he intends to attend the hearing and call any witnesses, inviting him to indicate whether or not he accepts all or any of the matters raised and if he does, inviting him to make any submissions he wishes to draw to the ALC's attention;
  - viii. a list of witnesses relied upon by ACCA, indicating those who have provided documentary evidence and those who have provided witness statements or letters;
  - ix. a summary of the ALC's powers.

### ***Hearings convened under AR 3***

13. For hearings in relation to applications including re-applications of certificates in accordance with AR 3(2), the hearings officer will send the Notice of Hearing in accordance with AR 3(4)(b).
14. A Notice of Hearing for a hearing in relation to an application or re-application for a certificate is only required under the Authorisation Regulations to include written notice of the date set (AR 3(4)(b)). However, as a matter of course, a Notice of Hearing for these hearings will also include some or all of the matters set out at AR 6(1)(b) (see paragraph 11), notwithstanding it is not a requirement under the Authorisation Regulations.

## Service of notices and documents

15. Service of any notice or document required to be served on an individual or firm may be carried out in one of the following ways (AR 11(1)(a)):
  - i. Sent by post or other delivery service in which delivery or receipt is recorded to, or by leaving it at his or its registered address or to any other address nominated in writing by the individual or firm for the service of notices and correspondence;
  - ii. Sent by e-mail provided that the provisions of AR 11(2)-(8) regarding service by e-mail are satisfied.
16. Service by post or other delivery service shall be deemed served 72 hours after it was sent by the postal operator or delivery service (AR 11(8)(a)). Service by any other means as set out in paragraph 15 above shall be deemed served on the day on which it was left or sent (AR 11(8)(b)).
17. Where an individual is represented by a solicitor or a professional body, a copy of the notice served in accordance with paragraph 15 above may also be:
  - (a) sent or delivered to the solicitor's practising address;
  - (b) sent or delivered to the professional body's business address; or
  - (c) sent by electronic mail to an electronic mail address of the solicitor or professional body, where the address has been notified to the Association as an address for communications.
18. Any notice or document required to be served on the complainant may be provided to him personally, sent by post or courier to the address nominated in writing by the complainant for service of any notice or document for the purpose of these regulations, or sent by electronic mail.
19. Any notice or document required to be served on the Association may be provided by sending it by post or courier to the investigating officer at the principal office of the Association or sending it by electronic mail.
20. Where a notice or document is served by electronic means, the party serving the document (be it the Association, the relevant person or the complainant) need not in addition send or deliver a hard copy.
21. The service of any notice or document may be proved by:
  - (a) a confirmation of posting issued by or on behalf of the postal operator or delivery service;
  - (b) a confirmation of delivery of the notice or document sent by electronic mail; or
  - (c) a signed statement from the person sending by post or delivering the notice in accordance with this regulation.



### **Inadequate notice**

22. When an individual or firm fails to attend a hearing, or the issue of inadequate service is raised at the hearing, the ALC must consider whether ACCA has complied with the relevant notice and service requirements.
23. Failure to attend a hearing convened under AR 6 may result in the hearing proceeding in the absence of the individual or the firm (AR 6(7) see paragraphs 31 to 34).
24. Failure to comply with the notice and service requirements may result in the matter being adjourned.
25. However, it should be noted that any failure to comply with the notice and service requirements does not automatically mean that the hearing cannot proceed and must be adjourned to ensure compliance. Any decision to adjourn a hearing remains at the discretion of the ALC taking into account the submissions of the parties and in accordance with the circumstances of the case, the public interest in the case being heard, the principles of fairness and expediency, and whether there is any prejudice to the individual or firm and if so, the effect of such prejudice.
26. It should be noted that circumstances involving a failure to comply with the notice requirement of at least 28 days prior written notice in respect of notices served under AR 6(1)(a) is distinct from any decision by ACCA to convene a hearing before the ALC at short notice in accordance with AR 6(2). Where ACCA wishes to convene a short notice hearing, its intention to do so should be clear from the Notice of Hearing and indicated at the outset of the hearing (see paragraphs 27 to 30 below regarding guidance on short notice).

### **Short notice hearings for hearings convened under AR 6**

27. Notice of the hearing in respect of hearings convened under AR 6 may be shortened in urgent cases (AR 6(2)(a)). What qualifies as 'urgent' will depend upon the circumstances of each case, but examples may include matters where there is an immediate and significant risk to the public.
28. The appropriateness of short notice and the degree of urgency must be considered by the ALC at the outset of the hearing.
29. In deciding whether the hearing should proceed at short notice, the ALC must consider whether it is necessary in the public interest and balance this consideration against any prejudice to the individual or firm. If the ALC is not satisfied that a hearing at short notice is necessary, the matter should be adjourned for such a period and under such directions as the ALC thinks fit.
30. It should be noted that in the event a hearing proceeds at short notice, the ALC only has the power to suspend or impose conditions upon a certificate, and cannot withdraw a certificate (AR 6(2)(b)). Where a matter has been heard by the ALC under the short notice provisions, the ALC can only withdraw a certificate once a further hearing on 'normal' notice has taken place. This further hearing must happen within 30 days of the short notice hearing, unless a longer period is agreed between the certificate holder and ACCA.

## Proceeding in absence

### *Hearings convened under AR 6*

31. Where an individual or firm fails to attend a hearing convened under AR 6, the ALC has a discretion to proceed in the absence of the individual or firm (AR 6(7)).
32. However, when considering whether to exercise its discretion to proceed in absence, the ALC must first consider:
  - i. whether there has been valid service in accordance with AR 11(1); and
  - ii. If so, whether it wishes to proceed in the absence of the firm or individual taking into account the factors set out at paragraph 34 below.
33. If there has not been valid service, and the firm or member has not attended, the matter should be adjourned in order for valid service to take place.
34. Before exercising its discretion to proceed in the absence of an individual or firm, the ALC must first consider the following matters:
  - i. That the decision to proceed in absence must be exercised with the utmost caution and with close regard to the overall fairness of the proceedings (*R v Jones (Anthony William)* [2003] 1 AC 1);
  - ii. That the discretion to proceed in absence is a severely constrained one and three factors are significant: the seriousness of the case against the perpetrator; the risk of reaching a wrong conclusion about the reason for his absence; the risk of reaching a wrong decision on the merits without the registrant's account (*Tait v Royal College of Veterinary Surgeons* [2003] UKPC 34);
  - iii. That the following principles, extrapolated from *Adeogba v The General Medical Council* [2016] EWCA Civ 162 also apply to the regulation of the accountancy profession and should therefore be taken into account by the ALC when considering whether to exercise its discretion (note text in square brackets has been substituted to refer to ACCA):
    - (i) It should be borne in mind that there are important differences between a criminal trial and [disciplinary/regulatory] proceedings. [The decision of a panel must be guided by the main statutory objective of the regulator; although ACCA is not a statutory regulator, its main objectives are to protect the public, uphold proper standards of conduct and maintain public confidence in the accountancy profession];
    - (ii) Fair economical, expeditious and efficient disposal of allegations made against a [member] is of very real importance;
    - (iii) Fairness includes to the practitioner and also fairness to the regulator. Importantly, unlike a criminal court, a panel does not have the power to compel the attendance of the [member];
    - (iv) The regulator represents the public interest. Accordingly it would run entirely counter to the protection, promotion and maintenance of the health and safety of the public if a practitioner could effectively frustrate the process and challenge a refusal to adjourn when a practitioner had deliberately failed to engage in the process;

- (v) There is a burden on [members] to engage with the regulator in relation to the investing and resolution of investigations against them;
- (vi) In many regulatory cases the rules make it mandatory for a [member] to provide a current registered address. Failure to comply with this mandatory obligation may give rise to disciplinary sanctions. In such circumstances it is for the [member] to ensure that notices sent by the regulator to that address come to his attention.

### ***Hearings convened under AR 3***

- 35. Hearings convened under AR 3 relate to applications made by a member, affiliate or registered student. Where the applicant fails to attend a hearing convened to consider his application, the principles for proceeding in absence may apply in determining the outcome of the application.
- 36. Depending on the circumstances of the applicant's absence from the hearing, it is also open to the ALC to infer that the applicant has taken the decision to withdraw his application.

## **Adjournments**

### ***Hearings convened under AR 6***

- 37. In respect of hearings convened under AR 6, a written application may be made by an individual or firm, or the case presenter to adjourn a hearing before the ALC after the Notice of Hearing has been issued (AR 6(8)(a)).
- 38. An application to adjourn will be considered at the outset of the hearing, unless it is reasonably practicable for the Chairman to consider an application made in advance of the hearing (AR 6(8)(a) and (b)). What is reasonably practicable will depend on the circumstances of each case, but the timing of the submission of the application will be an important factor to take into account.
- 39. Applications considered by the Chairman will be done so in the absence of the parties, taking into account the parties' written submissions regarding the application.
- 40. The Chairman or the ALC have an absolute discretion in deciding whether to adjourn a hearing before the ALC (AR 6(8)(b)). The test to be applied is whether the application is justified in all the circumstances (AR 6(8)(a) and AR 6(8)(b)).
- 41. The Chairman or ALC should provide written reasons for his/its decision on the application.
- 42. Where an application to adjourn is refused by the Chairman, it shall be considered by the ALC at the outset of the hearing in accordance with AR 6(8)(a). The Chairman shall be entitled to participate in the reconsideration of the application, and the Chairman's written reasons for denying the application shall be provided to the ALC (AR 6(8)(b)).

### ***Hearings convened under AR 3***

- 43. In respect of hearings convened under AR 3, the ALC has the power to adjourn consideration of the application in accordance with AR 3(6)(a)(iv).

### **Withdrawal of an application brought under AR 3**

44. Where an applicant wishes to withdraw an application brought under AR 3 and has already been notified of the date on which the ALC is convening to consider the matter, an application should be made in writing to the ALC, stating the grounds on which the withdrawal application is being made (AR 3(3)(a)).
45. An application under AR 3(3)(a) can be made at any time up until the application is determined by the ALC (AR 3(3)(b)).

### **Withdrawal of an application brought by ACCA under AR 5(1) or AR 5(2)**

46. Where ACCA wishes to withdraw an application brought under AR 5(1) or AR 5(2) and notice has already been served in accordance with AR 6(1), ACCA must make an application in writing to the ALC, stating the grounds for withdrawal of the application (AR 6(3)(a)).
47. An application under AR 6(3)(a) can be made at any time up until the application is determined by the ALC (AR 6(3)(b)).
48. The application may be considered without a hearing by the Chairman if both parties agree. Where a hearing is required, the ALC may determine the mode of hearing, which includes a telephone hearing (AR 6(3)(c)).

### **Evidence**

49. The admissibility of evidence before the ALC is guided by the principles of relevance and fairness. What is fair is fact sensitive and will depend on the circumstances in an individual case, particularly the nature and subject matter of the case<sup>1</sup>.

#### ***Hearings convened under AR 6***

50. The Notice of Hearing may be followed by the service of additional documents in advance of, and during the course of, the hearing (AR 6(1)(c)). Any documents served after the Notice of Hearing and up to 21 days before the hearing are usually referred to as 'additional's' and any documents served less than 21 days before the hearing (including during the course of the hearing) are usually referred to as 'tabled additional's'.
51. The firm or individual is required to submit the following no later than 21 days before the hearing (AR 6(4)):
  - i. a statement of position if the matter(s) are denied;
  - ii. any documentary evidence or witness statements the relevant person wishes to put before the ALC;
  - iii. the names of any ACCA witnesses the relevant person requires to attend the hearing for cross-examination and to what extent their evidence is disputed;
  - iv. the names and addresses of any witnesses to be called in support, and in the absence of a witness statement, the nature of the evidence the witness will be giving;
  - v. confirmation as to whether he wishes to attend the hearing.

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<sup>1</sup> *Razzaq v Financial Services Authority* [2014] EWCA 770

52. Failure to comply with the requirements of AR 6(4) will deprive the relevant person of the right to have witnesses attend the hearing unless the case presenter agrees that the witness evidence can be called or by order of the Chairman, following any submissions by both parties on the matter (AR 6(4)(c)).
53. Any dispute regarding the attendance of a witness to give oral evidence shall be determined by the Chairman. Each party must make written submissions to the Chairman clearly setting out their position. The Chairman has the power to order the attendance of a witness or make any such order that he or she thinks fit. Any decision made by the Chairman is final (AR 6(4)(b)).

#### ***Hearings convened under AR 3***

54. The ALC may admit oral or documentary evidence whether or not such evidence would be admissible in a court of law (AR 3(2)(f)(i)).
55. AR 3(2)(f)(ii) to (v) also defines the evidential weight the ALC must give to certain types of evidence in hearings which concern matters involving criminal or civil proceedings.
56. The ALC has the power to require the applicant to provide any additional information required, following receipt of the application and prior to its decision on the application, and the ALC may specify the manner in which such information shall be verified (AR 3(2)(b) and (c)).
57. The ALC may take into account any other information it considers appropriate in relation to the applicant, providing it is disclosed to the applicant at least 28 days prior to the hearing and does not constitute a breach by the ALC or ACCA of any duty to any other person (AR 3(2)(d)). What the ALC considers appropriate is a matter of judgement for the ALC. The ALC has a general discretion to refuse to consider the late disclosure of such information.
58. The applicant may serve any additional information, written comments and/or submissions for the ALC's consideration up to 21 days in advance of the hearing (AR 3(2)(e)).
59. The ALC has a discretion to accept information, comments or submissions served less than 21 days prior to the hearing in the event of exceptional circumstances (AR 3(2)(e)).

#### ***Hearsay evidence***

60. Hearsay evidence is admissible in all matters before the ALC in accordance with the requirement of consideration of fairness and relevance<sup>2</sup>. On this basis it is routinely admitted in support of applications for membership or readmission, applications or reapplications for certificates, matters in which the ALC is invited to consider whether to withdraw, suspend or impose conditions upon a certificate and referrals to the ALC in respect of the decision of the Regulatory Assessor.

61. Where the question of the admissibility of hearsay evidence arises, important matters for the ALC to take into account when determining whether to admit such evidence include:
  - i. proper consideration of the requirements of fairness and relevance;
  - ii. that the ALC can give less weight to hearsay evidence than if the maker of the statement was available to be cross-examined;
  - iii. where the hearsay evidence is a report or correspondence and its contents are challenged:
    - a. whether the individual or firm challenging the contents has notified ACCA of its position and set out what is challenged and why at least 21 days before the hearing in accordance with AR 6(3); and
    - b. whether the author of the report or correspondence has provided any response to those challenges.
  - iv. The principles set out in the case of *Razaq v Financial Services Authority* [2014] EWCA 770.

## Hearing procedure

### *Hearings convened under AR 6 and AR 3*

62. The procedure and format of a hearing convened under AR 6 is at the discretion of the ALC, subject to the provisions of AR 6(15).
63. The procedure and format of a hearing convened under AR 3 is governed by the provisions of AR 3(2).
64. The provisions under AR 6 and AR 3 provide that:
  - i. All parties may appear at the hearing in person (AR 6(15)(b) / AR 3(4)(c)(iv)). As a matter of practice, ACCA offers the facility to attend a hearing by way of video link or over the telephone;
  - ii. All parties may be represented by solicitor, counsel or other representative (AR 6(15)(b) / AR 3(4)(c)(iv));
  - iii. All parties may call witnesses in support to give evidence on their behalf and to be cross-examined (AR 6(15)(b) / AR 3(4)(c)(iv));
  - iv. The ALC may ask questions of the individual or the firm (AR 6(15)(b)) or of the applicant, ACCA or any witness (AR 3(4)(g));
  - v. All parties are entitled to make oral submissions to the ALC. The applicant has the right to speak last (AR 6(15)(c) / AR 3(4)(h)).

**Hearings – general**

65. Hearings before the ALC usually take the following course:
- The Hearings Officer reads the record of the details of the member (usually the front page of the hearing bundle) and a summary of what the report concerns in order to open the hearing. Until this has been done, the hearing is not considered to have been 'opened';
  - The ALC invites the applicant or their representative to set out their position by way of submissions and/or any evidence in support, including any live witness evidence. Where witnesses are called, the respondent or their representative has an opportunity to ask questions in cross examination. The panel members of the ALC may then ask any questions they have;
  - The ALC invites the respondent or their representatives to set out their position by way of submissions and/or any evidence in support, including any live witness evidence. Where witnesses are called, the applicant or their representative has an opportunity to ask questions in cross examination. The panel members of the ALC may then ask any questions they have;
  - The ALC invites any closing submissions from both parties or their representatives, with the applicant having the right to speak last;
  - The ALC receives legal advice from the Legal Advisor, before retiring in private to consider its decision;
  - The ALC will announce its decision at the hearing and written reasons of its decision may be provided at the time of the hearing, or follow thereafter.

**Factors to consider when determining applications or re-applications under AR 3(1) or AR 3(11)*****Applications for certificates under AR 3(1)***

66. In determining whether to grant an application made under AR 3(1), the ALC must be satisfied that the applicant is eligible for the certificate applied for in accordance with the eligibility requirements set out in the applicable regulations under the GPR, as set out in Schedule 1 to this guidance.
67. In respect of applications for a general practising certificate made under AR 3(1), the assessment of eligibility under GPR 6 will also include an assessment of whether the applicant is fit and proper within the meaning of GPR 8, and where applicable, any of the additional regulations within the GPR which apply, as set out in Schedule 2 to this guidance.

***Re-applications for certificates made under AR 3(11)***

68. The ALC must consider a re-application for a certificate in the same way it would consider an original application and in accordance with AR 3(1) to 3(10) (AR 3(11)) (see paragraphs 61 and 62 of this guidance for reference to applications under AR 3(1)).
69. The ALC must also have specific regard to the circumstances in which the applicant previously failed to obtain a certificate or ceased to be a certificate holder (AR 3(11)(a)).

### **Factors to consider when determining withdrawal of, suspension of, or imposition of conditions on a certificate under AR 5(1) or AR 5(2)**

70. In determining whether to exercise its powers under AR 5(1) or AR 5(2), the ALC shall take into account all matters it considers relevant (AR 5(3)).
71. In determining whether the holder of a certificate is a fit and proper person in accordance with AR 5(2)(g), the ALC shall consider all relevant matters set out in GPR 8 regarding fit and proper persons and, where applicable, any of the additional regulations within the GPR as set out in Schedule 2 to this guidance.
72. See also the 'Guidance for Regulatory Orders: Eligibility for Certificates or Licences and Unsatisfactory Monitoring Visits' November 2014 which provides further guidance for the ALC to follow in all but exceptional circumstances.

### **Factors to consider when determining applications to become a member or registered student under MR 9(1) or applications for readmission under MR 14(1)**

#### ***Applications to become a member or registered student under MR 9(1)***

73. In determining whether to grant an application to become a member or registered student under MR 9(1), the ALC must be satisfied that the applicant is eligible for admission in accordance with the eligibility requirements set out in MR 3 (membership) or MR 7 (registered student status).
74. See also the 'Guidance for Regulatory Orders: Admissions, Staff Admissions, Readmissions and Bankruptcy', February 2013 for further guidance.

#### ***Applications for readmission under MR 14(1)***

75. The ALC must consider an application for readmission in the same way it would consider an original application and in accordance with MR, save that (MR 14(1)):
  - i. The ALC must have specific regard to the circumstances of the member's / affiliate's / registered student's cessation of membership (MR 14(1)(a)); and
  - ii. The ALC has the discretion to require the member / affiliate / registered student to pass further exams and / or tests and / or satisfy other requirements before it considers their application for readmission (MR 14(1)(b)).
76. A former member, affiliate or registered student who has been the subject of a disciplinary order which excludes him from membership or results in the loss of affiliate or registered student status is restricted from applying for readmission under MR 14(1) until after the later of (MR 14(2)):
  - i. The expiry of twelve months after the effective date of the disciplinary order (MR 14(2)(a));
  - ii. The expiry of the specified period where the disciplinary order prohibits an application for readmission (MR 14(2)(b)).
77. See also the 'Guidance for Regulatory Orders: Admissions, Staff Admissions, Readmissions and Bankruptcy', February 2013 for further guidance.



**Applications to remain a member / affiliate / registered student following a bankruptcy event (MR 13(1)(b)) ('Bankruptcy applications')**

78. The ALC is required to determine whether the applicant continues to be eligible to remain a member, affiliate or registered student in accordance with the eligibility requirements under MR 3 (member), MR 5 (affiliate) and MR 7 (registered student), notwithstanding the bankruptcy event.
79. In order to be satisfied of an applicant's continued eligibility for membership following a bankruptcy event, the ALC will need to consider whether the applicant continues to satisfy the general requirement as to his general character and suitability (MR 3(a)(iv) for members and affiliates, and MR 7(1)(b) for registered students).
80. The ALC may require the applicant to provide any information, including documents that it requires (MR 13(2)).
81. The ALC may take into account any information it considers appropriate in determining continued eligibility (MR 13(2)).
82. See also the 'Guidance for Regulatory Orders: Admissions, Staff Admissions, Readmissions and Bankruptcy', February 2013 for further guidance.

**Referral to the ALC regarding decision of the Regulatory Assessor under AR 7(7)(a) or 7(7)(c)**

83. If the holder or former holder of a certificate wishes to exercise his right of referral to the ALC under AR 7(7)(a), he must notify ACCA in writing within 30 days of receiving the notification of the Regulatory Assessor's decision (AR 7(7)(b)).
84. The notification shall include a description of the aspects of the decision the holder or former holder disagrees with and why (AR 7(7)(b)).
85. If ACCA wishes to exercise its right of referral to the ALC under AR 7(7)(c), it must notify the holder or former holder of a certificate in writing within 30 days of receiving the notification of the Regulatory Assessor's decision (AR 7(7)(d)).
86. The notification shall include a description of the aspects of the decision ACCA disagrees with and why (AR 7(7)(d)).
87. The ALC may also obtain guidance from the relevant part of the Guidance for Regulatory Orders, where it is applicable to the matter being considered.

**Waiver applications**

88. The relevant considerations for the ALC in respect of waiver applications under MR 4(4)(g), DPBR 10(1)(a) or IIBR 13(1)(a) are set out under each of the relevant regulations.
89. In respect of a waiver application brought under one of the GPRs set out in Schedule 1, the ALC may waive, vary or suspend the requirements of the relevant regulation in its absolute discretion as it thinks fit. The test to be applied is 'in exceptional circumstances', as specified by the relevant regulation. What constitutes exceptional circumstances will depend on the circumstances of each case.
90. See also Guidance for Regulatory Orders: Applications for Waivers of Regulations, February 2013 for further guidance.

## Types of order

### **Hearings convened under AR 3**

91. In respect of applications including re-applications for certificates under AR 3(1) or AR 3(11), applications to become a member or registered student under MR 9(1) or applications for readmission under MR 14(1), the ALC may:
  - Grant the application (AR 3(6)(a)(i));
  - Refuse the application (AR 3(6)(a)(ii));
  - Grant the application subject to such condition(s) as it considers appropriate (AR 3(6)(a)(iii));
  - Adjourn consideration of the application (AR 3(6)(a)(iv)).
92. The ALC may also accept undertakings from any person as a condition of issuing a certificate (AR 3(6)(b)).
93. In relation to re-applications for certificates under AR 3(11), the ALC has a discretion to require the applicant to pass further examinations and/or tests and/or satisfy other requirements before it considers the application for a new certificate.

## Hearings convened under AR 6

### **Withdrawal of, suspension of, or imposition of conditions on a certificate under AR 5(1) or AR 5(2)**

94. In respect of matters concerning the withdrawal of, suspension of, or imposition of conditions on a certificate in accordance with AR 5(1) or 5(2), or referrals brought under AR 7(7)(a) (holder or former holder of a certificate regarding Regulatory Assessor's decision) or AR 7(7)(c) (ACCA regarding Regulatory Assessor's decision) the ALC may make one of the following orders:
  - i. Dismiss or refuse the application (AR 6(16)(a)(i));
  - ii. Withdraw the individual's and/or firm's certificate (AR 6(16)(a)(ii));
  - iii. Suspend the individual's and/or firm's certificate (AR 6(16)(a)(iii));
  - iv. Impose conditions on the individual's and/or firm's certificate (AR 6(16)(a)(iv));
  - v. Specify that no future application for a certificate by the relevant person will be entertained for a specified period or until the occurrence of a specified event (AR 6(16)(a)(v));
  - vi. Appoint a regulatory assessor in accordance with AR 7 (AR 6(16)(a)(vi)).

**Applications to remain a member / affiliate / registered student following a bankruptcy event (MR 13(1)(b))**

95. The ALC may make one of the following orders after considering bankruptcy applications under MR 13(1)(b):
- (i) permit the individual to retain his membership, affiliate status or registered student status (MR 13(3)(a));
  - (ii) withdraw the individual's membership, affiliate or registered student status (MR 13(3)(b));
  - (iii) permit the individual to retain his membership, affiliate or registered student status subject to any condition it specifies (MR 13(3)(c));
  - (iv) make any other decision it considers fit in respect of the individual (MR 13(3)(d)).

**Matters to consider when making an order under AR 6(16)(a) or determining an application under AR 3(6)(a) or re-application under AR 3(11)**

96. In determining the appropriate order to make under AR 6(16)(a), or determining an application under AR 3(1) or reapplication under AR 3(11), the ALC must:
- i. Take into account the guiding principles of its regulatory function as follows:
    - (i) to protect the public;
    - (ii) to maintain public confidence in the profession;
    - (iii) to uphold proper standards of conduct.
  - ii. Apply the principle of proportionality and weigh the interests of the individual or firm against the need to fulfil the purpose of a regulatory order.
97. In determining the appropriate order to make under AR 6(16)(a), the ALC may wish to take into account the following factors:
- i. any aggravating and mitigating factors;
  - ii. any evidence submitted by the individual or firm to refute the findings of the visit;
  - iii. any explanation offered for the inadequate performance of the relevant work;
  - iv. the apparent willingness and ability of the holder to achieve the standard of work expected;
  - v. whether or not the individual or firm has been subject to conditions in the past and the risk that similar or alternative conditions in the future will not be effective in achieving a sustained improvement in the standard of work;
  - vi. if the firm or individual has taken action to remedy the inadequate performance of the relevant works since the most recent monitoring visit, why appropriate action was not taken previously and whether the apparent improvement can be relied upon as effective, representative and sustainable. However, this point must be considered alongside the guidance set out at paragraph 7.5.2 of the GRO in relation to Eligibility for Certificates or Licences and Unsatisfactory Outcomes to Monitoring Visits, November 2014;
  - vii. the action the firm or individual has or intends to take where eligibility for a certificate is in question;

- viii. any evidence submitted by the firm or individual regarding the effect of any order;
- ix. any other evidence submitted on behalf of the firm or individual including references and testimonials.

## **The Statutory Auditors and Third Country Auditors Regulations 2016 (SATCAR)**

- 98. The Statutory Auditors and Third Country Auditors Regulation 2016 (SATCAR) came into force as of 17 June 2016. The legislation conveys specific duties on the Financial Reporting Council (FRC) as the Competent Authority. FRC delegates specific duties to ACCA as part of a delegation agreement signed in June 2016.
- 99. The SATCAR provisions are relevant to Disciplinary Committee, Admissions and Licensing Committee, Interim Orders Committee, Health Committee and Appeal Committee in cases concerning statutory auditors practising and/or operating in the United Kingdom.
- 100. Regulation 5(1) of SATCAR introduces a number of additional sanctions available to a Committee where an auditor has contravened a relevant requirement.
- 101. Regulation 5(3) of SATCAR requires that the [relevant] Committee:  
'In determining the type and level of sanctions to be imposed under this regulation, the competent authority must take into account all relevant circumstances, including –
  - (a) the gravity and duration of the contravention;
  - (b) the Auditor's degree of responsibility;
  - (c) the Auditor's financial strength;
  - (d) the amount, so far as can be determined, of profits gained or losses avoided by Auditor;
  - (e) the extent to which Auditor has co-operated with the competent authority;
  - (f) any previous contravention by Auditor of a relevant requirement.'
- 102. Regulation 6(3) of SATCAR provides four grounds where a relevant person's (an auditor practising and/or operating in the UK only) name should not be published.<sup>[1]</sup> At the relevant stage of the hearing, the Case Presenter will invite the Committee to consider whether the statutory auditor's name should not be published.

## **Statutory Auditors Practising and/ or Operating in Ireland**

- 103. Directive 2014/56/EU of the European Parliament and of the Council of 16 April 2014 amending Directive 2006/43/EC on statutory audits of annual accounts and consolidated accounts ("the Directive") came into force as of 17 June 2016. The legislation conveys specific duties on IAASA as the Competent Authority as well as ACCA as a Recognised Accountancy Body.
- 104. The provisions of the Directive are relevant to Disciplinary Committee, Admissions and Licensing Committee, Interim Orders Committee, Health Committee and Appeal Committee in cases concerning statutory auditors practising and/or operating in Ireland.

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[1] Additional information available in ACCA's *Guidance on Publicity* document

105. Article 30(b) of the Directive provides that when determining the type and level of administrative sanctions and measures, competent authorities (and relevant ACCA Committees) are to take into account all relevant circumstances, including where appropriate:
- (a) the gravity and the duration of the breach;
  - (b) the degree of responsibility of the responsible person;
  - (c) the financial strength of the responsible person, for example as indicated by the total turnover of the responsible undertaking or the annual income of the responsible person, if that person is a natural person;
  - (d) the amounts of the profits gained or losses avoided by the responsible person, in so far as they can be determined;
  - (e) the level of cooperation of the responsible person with the competent authority;
  - (f) previous breaches by the responsible legal or natural person.

Additional factors may be taken into account by competent authorities (and relevant ACCA Committees), where such factors are specified in national law.

106. In relation to publicity in cases concerning Statutory Auditors practising and/ or operating in Ireland, the default position is that the Admissions and Licensing Committee reasons for decision, including details in relation to the identity of the relevant person and any sanctions or penalties imposed will be disclosed to the public.
107. These provisions are additionally relevant to Disciplinary Committee, Health Committee and Appeal Committee in cases concerning statutory auditors practising and/or operating in Ireland.
108. The Admissions and Licensing Committee will not issue a direction that the identity of the relevant person should be made available to the public where it considers that disclosure of the identity of the relevant person:
- (a) may have an adverse impact on the interests of third parties;
  - (b) may have an adverse impact on the health or safety of a member such that publication would be unduly harsh;
  - (c) is not necessary for the publication of the public interest having regard to the nature and seriousness of the offence; in this regard the Appeal Committee should take into consideration the following:
    - (i) whether the offence concerned dishonesty, integrity, theft, fraud, negligence, recklessness or incompetence;
    - (ii) any likely consequences of non-disclosure;
    - (iii) the sanction imposed;
    - (iv) the likelihood of the repetition of the offence;
    - (v) the disciplinary history of the relevant person; and
    - (vi) any other circumstances or factor it considers relevant.

109. There must be sufficient reasons to justify making a direction that the identity of the relevant person should not be made available to the public; essentially, the case must cross a high threshold to satisfy one or more of the exceptions denoted above. However, where the Admissions and Licensing Committee exercises its discretion in this manner it will set out in writing the reasons for the decision. At the relevant stage of the hearing, the Case Presenter will invite the Committee to consider whether the statutory auditor's name should not be published.
110. Publicity of such sanctions will be publicised by ACCA as soon as possible and will be made available on ACCA's website for at least five years from the date of the sanction, or where the sanction has been appealed, at least five years from the conclusion of that appeal, or such longer period as is proportionate to the breach in question.

## **Guidance for Regulatory Orders**

111. The Guidance for Regulatory Orders ('GRO') is divided into three sections which cover the different types of applications or hearings before the ALC. They are as follows:
  - i. Eligibility for Certificates or Licences and Unsatisfactory Outcomes to Monitoring Visits, November 2014 which provides guidance in relation to the withdrawal of, suspension of or imposition of conditions on, a certificate under AR 5(1) or AR 5(2);
  - ii. Admissions, Staff Admissions, Readmissions and Bankruptcy, February 2013 which provides guidance in relation to applications to become a member or registered student under MR 9(1), applications for readmission under MR 14(1), and bankruptcy applications under MR 13(1)(b);
  - iii. Applications for Waivers of Regulations, February 2013 which provides guidance on waiver applications and the available orders.
112. The GRO provides guidance to the ALC when they are considering what order or decision to make. The purpose of this guidance is to assist the ALC in the exercise of its powers, manage regulatory risk, provide transparency of policies and procedures and ensure consistency of approach whilst applying the principle of proportionality.
113. The GRO is a guidance document to which the ALC should have regard when considering the most appropriate and proportionate regulatory action to take. The ALC should only depart from the GRO in exceptional circumstances and set out clearly why it has done so in its written reasons.

## **Representation**

114. An individual or firm is entitled to attend and be represented in a hearing before the ALC as he or it may wish (AR 4(c)(iv) / AR 6 (6)), subject to the discretion of the ALC which may determine otherwise or limit the participation of the representative of the individual or firm.

## Exclusion of persons from a hearing

115. The ALC has the discretion to exclude any persons from a hearing before the ALC (AR 6(13)).
116. The ALC should invoke this discretion to exclude any person from a hearing where the person's conduct is likely to disrupt the orderly conduct of proceedings. Other factors the ALC may wish to consider is whether the conduct is a one off incident or has been repeated on more than one occasion, and whether such conduct can be appropriately controlled by the Chairman.
117. Any exclusion from a hearing would be extremely rare. Before invoking its discretion the ALC should consider possible alternative solutions to ensure the orderly conduct of proceedings.

## Legal advisers

118. During a hearing, the ALC is assisted by a legal adviser, who is an experienced barrister or solicitor who also has experience in regulatory law. The legal adviser is independent of the ALC and/ or the parties.
119. The legal adviser's role is to provide advice to the ALC on all procedural and legal matters. The legal adviser retires with the ALC when it goes into private session but does not play any part in the ALC's decision making. Any advice the legal adviser provides to the ALC in private session must be repeated in public session, and all parties will be given an opportunity to make submissions on that advice. The legal adviser also records the ALC's reasons for its decision and carries out any other task appropriate to his/her role.

## Health hearing

120. Where it appears that an individual may be too ill to participate in the proceedings, the ALC has the power to adjourn the case and refer it to the Health Committee ('HC') for a health hearing in order to determine the relevant person's fitness to participate in the proceedings (AR 6(11) and HR 3(b)). A referral by the ALC to the HC can be made at any time before or during a hearing before the ALC. In such circumstances, the relevant provisions of the Health Regulations shall apply.

## Publicity

### ***Advance publicity in hearings convened under AR 3 and AR 6***

121. ACCA must provide advance publicity of a hearing convened under AR 3 or AR 6 (AR 3(5)(a) / AR 6(14)(a)). The manner of any advance publicity is at the discretion of ACCA as it thinks fit and may include publication of the name of the individual and/or firm involved.
122. ACCA's usual practice in respect of advance publicity is to publish the date and location of the hearing and the name of the individual and/or firm involved on its website<sup>3</sup>. However ACCA's approach to advance publicity will turn on the facts of each case.

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3 [www.accaglobal.com/uk/en/about-us/regulation/disciplinary-and-regulatory-hearings/notices.html](http://www.accaglobal.com/uk/en/about-us/regulation/disciplinary-and-regulatory-hearings/notices.html)

**Publicity following an adjournment of a hearing convened under AR 6**

123. Any directions given by the ALC or conditions imposed upon an adjournment must not be published, unless the ALC directs otherwise. In the event that the ALC directs that any directions/ conditions should be published, they will be published in accordance with AR 6(14)(c)(i) as if they were orders.

**Post-hearing publicity in hearings convened under AR 6**

124. ACCA shall publish as soon as practicable and in such manner as ACCA thinks fit:
- i. Any order, suspension or condition relating to the certificate of an individual and/or firm made under AR 6(16)(a)(ii) to (iv), together with the reasons for the ALC's decision in whole or summary form, naming the individual and/or firm (AR 6(14)(c)(i));
  - ii. Where the individual and/or firm relinquishes his/its certificate prior to a hearing before the ALC, details of the fact and any consequential orders, together with the reasons for the ALC's decision in whole or summary form, naming the individual and/or firm (AR 6(14)(c)(iii)).
125. Where an order, suspension or condition relating to the certificate of an individual and/or firm is not made under AR 6(16)(a)(ii) to (iv), the reasons for the ALC's decision shall not be published, unless the relevant person requests publication of the decision in whole or summary form (AR 6(14)(c)(ii)).
126. Note that in cases involving statutory auditors, legislation enacted on 17 June 2016 'The Statutory Auditors and Third Country Auditors Regulations 2016' ("SATCAR") for the UK (see Regulation 6) and Directive 2014/56/EU of the European Parliament and of the Council of 16 April 2014 amending Directive 2006/43/EC on statutory audits of annual accounts and consolidated accounts ("the Directive") require that the competent authority shall publish details of the sanctions it imposes.
127. However, Regulation 6 of SATCAR sets out circumstances in which the identity of the person must not be published as follows:
- (a) where A is an individual and the competent authority considers the publication of personal data would be disproportionate;
  - (b) where publication would jeopardise the stability of financial markets;
  - (c) where publication would jeopardise an ongoing criminal investigation; and
  - (d) where publication would cause disproportionate damage to any institution or individual.
128. In relation to publicity in cases concerning Statutory Auditors practising and/ or operating in Ireland, the default position is that the Admissions and Licensing Committee's reasons for decision, including details in relation to the identity of the relevant person and any sanctions or penalties imposed will be disclosed to the public.



129. The Admissions and Licensing Committee will not issue a direction that the identity of the relevant person should be made available to the public where it considers that disclosure of the identity of the relevant person:
- (a) may have an adverse impact on the interests of third parties;
  - (b) may have an adverse impact on the health or safety of a member such that publication would be unduly harsh;
  - (c) is not necessary for the publication of the public interest having regard to the nature and seriousness of the offence; in this regard the Disciplinary Committee should take into consideration the following:
    - (i) whether the offence concerned dishonesty, integrity, theft, fraud, negligence, recklessness or incompetence;
    - (ii) any likely consequences of non-disclosure;
    - (iii) the sanction imposed;
    - (iv) the likelihood of the repetition of the offence;
    - (v) the disciplinary history of the relevant person; and
    - (vi) any other circumstances or factor it considers relevant.
130. There must be sufficient reasons to justify making a direction that the identity of the relevant person should not be made available to the public; essentially, the case must cross a high threshold to satisfy one or more of the exceptions denoted above. However, where the Admissions and Licensing Committee exercises its discretion in this manner it will set out in writing the reasons for the decision.
131. Publicity of such sanctions will be publicised by ACCA as soon as possible and will be made available on ACCA's website for at least five years from the date of the sanction, or where the sanction has been appealed, at least five years from the conclusion of that appeal, or such longer period as is proportionate to the breach in question.
132. In matters to be determined under AR 5(1) or AR 5(2) involving statutory auditors, the above SATCAR or Regulation provisions therefore provide the ALC with a discretion to decide whether there are applicable circumstances (as set out at paragraph 127 or 129 above) which determine that the identity of a firm or individual must not be published. In such cases, the ALC should invite submissions from both parties on the matter of publicity. Where it determines that the identity of a firm or individual must not be published, it must set out clearly in its reasons the grounds for its decision with reference to the applicable provisions of Regulation 6(3) of SATCAR or section 935D(3).

***Publicity in bankruptcy applications***

133. MR 13(7) requires that all decisions made by the ALC under MR 13(4) are published, along with the reasons for the decision (in whole or summary form), naming the relevant person as soon as practicable. The manner of any publication is at the discretion of ACCA as it thinks fit (MR 13(7)).

### ***Insolvency Service provision***

134. The Insolvency Service has the discretion to publish the names of the holders or former holders of ACCA's insolvency licence who are subject to a decision of the ALC, as well as details of the decision made, in such publications and in such manner as it thinks fit (AR 6(14)(f)).

### **Public hearings**

135. Hearings convened under AR 3<sup>4</sup> or AR 6 shall be open to the public unless the ALC determines upon the application of either party or upon its own motion to exclude the public from attending all or part of the hearing at any time (AR 6(13)).
136. The test to be applied by the ALC when determining whether to exclude the public from a hearing convened under AR 3 or AR 6 is whether the particular circumstances of the case outweigh the public interest in the hearing being open to the public (AR 6(12)(a)). This is the same in respect of bankruptcy applications (MR (13)(6)(a)).
137. The ALC may establish any procedures it considers necessary or desirable regarding the attendance of the public at such hearings, and has an absolute discretion to determine the procedure to be adopted (AR 6(12)(b) / MR 13(6)(b)). This includes the power to exclude from any hearing, or limit the participation of, any person (including the relevant person and/ or his representative) whose conduct, in the opinion of the Committee, is likely to disrupt the orderly conduct of the proceedings (AR 6(13)).

### **Notification of decisions**

138. For hearings convened under AR 3 or AR 6, written notice of the decision made by the ALC must be given to the individual and/or firm within 14 days of the decision. This must include a written statement of the ALC's reasons unless a longer period for the provision of the reasons is necessary in the circumstances (AR 3(7) / AR 6(17)).

### **Continuity**

139. Where a certificate has been withdrawn or suspended under AR 6(16)(a)(ii) or (iii), the ALC has the power to order that the holder of the certificate requests his/its continuity nominee takes responsibility for his practice (AR 6(18)), although continuity arrangements are not expected to be a long term solution.
140. In relation to an insolvency licence, the ALC has the power to order ACCA to ensure that an application is made to the Chancery Division of the High Court to transfer any appointments held by the practitioner to his continuity nominee or other individual (AR 6(18)(b)).

### **Administration charge**

141. There is no power to award costs to either party in relation to matters before the ALC.
142. However, where an applicant withdraws an application brought under AR 3, the ALC has the discretion to charge the applicant a reasonable sum to pay or contribute towards the cost of processing the application between its receipt by the ALC and its withdrawal by the applicant. This is called an administration charge (AR 3(10)). What is a reasonable sum will depend on the facts of each case.

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<sup>4</sup> See paragraph 8 above for further information

143. Where the application is withdrawn, any application fee submitted with the application will be returned to the applicant, subject to the administration charge (AR 3(10)).

### **Interim orders in respect of matters being determined under AR 5(1) or AR 5(2)**

144. ACCA can apply to the Interim Orders Committee ('IOC') at any time before a decision is made under AR 5(1) or 5(2), and the procedures set out in the Interim Orders Regulations apply (AR 5(5)).
145. Where a decision has been made under AR 5(1) or AR 5(2), the ALC has the power, either on the application of ACCA or of its own motion, to reconstitute itself as an Interim Orders Committee for the purposes of making an interim order, or varying or revoking the terms of an existing interim order, and the procedures set out in the Interim Orders Regulations apply. Please note that this power is additional to the power available to the ALC under AR 6(8)(h) which permits the ALC to reconstitute itself as an Interim Orders Committee in the event that the hearing of a case under the provisions of AR 6 has been adjourned (see paragraph 146 to 153 of this guidance).

#### ***Interim orders in hearings adjourned before the ALC***

146. In the event that a matter before the ALC is adjourned, the ALC may reconstitute itself as an Interim Orders Committee:
- i. to decide whether or not to make an interim order; or
  - ii. to vary or revoke the terms of an existing interim order (IOR 3(3)).
147. This may be done on the application of ACCA or of the ALC's own motion.
148. In such circumstances, it is unlikely there has been compliance with the notice provisions of IOR 5(1), 5(2) and/or 5(4), and the provisions of IOR 5(5) will therefore apply with regard to hearing the application at short notice.
149. Under IOR 5(5), the IOC (reconstituted from the ALC) will be required to consider at the outset of the interim order application the following:
- i. the appropriateness of short notice;
  - ii. the degree of urgency; and
  - iii. whether prejudice has been caused to any party.
150. In order to proceed to hear the application, the IOC must be satisfied that an interim order hearing is necessary in the public interest, and the factors set out at paragraph 149 above will be relevant to its consideration.
151. In the event that it is not satisfied that an interim order hearing is necessary in the public interest, the IOC may adjourn the matter and make any required directions.
152. An application in these circumstances can be made in the absence of an individual and/or firm where that individual and/or firm fail to attend the substantive hearing before the ALC. However, the reconstituted IOC should carefully consider whether it is appropriate to proceed in the absence of an individual and/or firm at any interim orders hearing that follows an adjourned hearing before the ALC, where sitting as the ALC it has already declined to proceed in the absence of the same individual and/or firm at the substantive hearing.
153. For guidance on interim orders generally, please refer the Interim Order process and guidance.

## **Slip rule (AR 8(1))**

154. In respect of hearings convened under AR 3 or AR 6, where the order and/or written statement of reasons for the ALC's decision contains an accidental error or omission, a party may apply for it to be corrected under AR 8(1) by way of application notice to ACCA.
155. The application notice must set out the error or omission, and the correction being sought.
156. Where the error or omission is obvious, the application may be considered by the Chairman without notice, or the Chairman may direct that notice of the application be given to the other party (AR 8(1)(b)).
157. The application may be considered without a hearing with the consent of the parties. Parties should not unreasonably withhold their consent to consider the matter without a hearing (AR 8(1)(c)).
158. Where the application is opposed, it should be heard at a hearing by the same ALC which made the order and/or written statement of reasons which are the subject of the application, but only where this is practical to do so (AR 8(1)(d)). The ALC may not, however, conduct a re-hearing of the case.
159. The ALC may of its own motion vary its own order and/or written statement of reasons in order to make the meaning and intention clear (AR 8(1)(e)).

## **New evidence (AR 8(2))**

160. In respect of hearings convened under AR 3 or AR 6, where new evidence comes to light which fundamentally invalidates any order or decision of the ALC, the ALC has the power and absolute discretion to amend, vary or rescind the relevant order or decision only if this is to the advantage of the relevant person (AR 8(2)). What constitutes new evidence will depend on the circumstances of each case and is a matter of judgement for the ALC. In the case of hearings convened under AR 6, the ALC should be cautious to determine that evidence which should have been available during a monitoring visit and was not, constitutes new evidence.

## **Effective date and appeals (AR 9)**

### ***Appeals procedure***

161. There is a right of appeal from the ALC to the Appeal Committee ('AC') in respect of any decision of the ALC made pursuant to AR 3(6) or 6(16) in respect of an individual or firm (including applications under MR 9(1), MR 13(1)(b) and MR 14(1)). The procedure for an appeal from the ALC to the AC is governed by the Appeal Regulations (AR 9(1)(a)). See Appeal Regulations 3 to 7 in particular.
162. ACCA also has a right of appeal to the AC against a decision of the ALC (AR 9(1)(b)), as set out in Appeal Regulation 3 and governed by the Appeal Regulations.

**Effective date**

163. The effective date is the date from which a decision of the ALC made pursuant to AR 3(6) or AR 6(16) takes effect. It is the date of the expiry of the appeal period referred to in the Appeal Regulations (AR 9(2)). In the case of a firm or individual who is the subject of an order by the ALC, the appeal period runs for 21 days following service of the written statement of the reasons for the decision of the ALC (Appeal Regulation 3(1)) unless one of the two exceptions below apply:
- i. The appellant has given notice of appeal prior to the expiry of the appeal period which has the effect of suspending the order until the appeal has been determined (AR 9(2)(a)). The date at which the order will take effect (if at all) in these circumstances depends on the outcome of the appeal process and is set out at Appeal Regulation 16; or
  - ii. The ALC directs that, in the interests of the public, the order should have immediate effect (AR 9(2)(b)), subject to it being varied or rescinded on appeal as specified in the Appeal Regulations.
164. Where a decision is made under AR 5(1) or AR 5(2) in Irish audit cases, an interim order, rather than an order with immediate effect, should be sought / considered in accordance with IOR 5(5) and the requirements of the Interim Orders Regulations generally (and in view of the requirements of the European Union (Statutory Audits) Regulations 2016 (SI. No 312 of 2016)).

**Costs (AR 10)**

165. The ALC does not have the power to order the payment of costs by either party, regardless of the outcome of the application (AR 10). However see paragraphs 141 to 143 above in relation to the administration charge available where applications under AR 3 are withdrawn.

**Waiver of notice, service or time requirements (AR 16)**

166. The ALC has a general discretion under AR 16 to dispense with any requirement provided for under the Authorisation Regulations in respect of notices, service or time (AR 16) in any case.
167. The test for the ALC to apply when deciding whether to waive any such requirement is:
- (i) whether a waiver appears to be in the interests of justice;
  - (ii) having regard to all the circumstances;
  - (iii) provided it is satisfied that neither the relevant person nor ACCA has been prejudiced in the conduct of his or its case.

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1 January 2019

Adjudication Department

## Schedule 1

### Waiver applications

Description	Waiver regulation
Continuing Professional Development	MR 4(4)(g)
Qualifications for a practising certificate	GPR 7(3)
Professional Indemnity Insurance	GPR 9(7)
Continuity of practice	GPR 11(4)
Audit qualification UK	GPR Annex 1, Appendix 1, 6(6)
Qualifications for practising certificate Zimbabwe	GPR Annex 3 6(3)
Regulations of DPBR	DPBR 10(1)(a)
Regulations of IIBR	IIBR 13(1)(a)

## Schedule 2

### Eligibility requirements under GPR for applications under AR 3(1) or re-applications under AR 3(11)

Description	GPR
Practising certificate	GPR 6
Audit qualification UK	Regulation 4 & 6(2), Annex 1, Appendix 1
Auditing certificate UK	Regulation 5, Annex 1, Appendix 1
Audit qualification Republic of Ireland	Regulation 4 & 6(2), Annex 2
Auditing certificate Republic of Ireland	Regulation 5, Annex 2
Audit qualification Zimbabwe	Regulation 5 & 6(2), Annex 3

## Schedule 3

### *Fit and Proper persons (additional considerations to GPR 8 under GPR)*

Description	GPR
Auditing certificates	Regulation 8, Annex 1, Appendix 1
Insolvency licences	Regulation 7, Annex 1, Appendix 4
Republic of Ireland	Regulation 8, Annex 2
Zimbabwe	Regulation 7, Annex 3
South Africa	Regulation 5, Annex 5

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