



The Business Impact Target, Growth Duty and Small Business Appeals Champion; Consultation on Scope and Guidance

ICAEW welcomes the opportunity to comment on *The Business Impact Target, Growth Duty and Small Business Appeals Champion; Consultation on Scope and Guidance* published by the Department for Business, Innovation and Skills (BIS) on 11 February 2016, a copy of which is available from this [link](#).

This response reflects the views of ICAEW as a regulator. ICAEW Professional Standards is the regulatory arm of ICAEW. Over the past 25 years, ICAEW has undertaken responsibilities as a regulator under statute in the areas of audit, insolvency, investment business and most recently Legal Services. In discharging our regulatory duties we are subject to oversight by the FRC's Conduct Committee, the Irish Auditing and Accounting Supervisory Authority (IAASA), the Insolvency Service, the FCA and the Legal Services Board.

ICAEW is the largest Recognised Supervisory Body (RSB) and Recognised Qualifying Body (RQB) for statutory audit in the UK, registering approximately 3,500 firms and 9,300 responsible individuals under the Companies Acts 1989 and 2006.

ICAEW is the largest Prescribed Accountancy Body (PAB) and Recognised Accountancy Body (RAB) for statutory audit in Ireland, registering approximately 3,500 firms and 7,500 responsible individuals under the Companies Act 1990.

ICAEW is the largest single insolvency regulator in the UK licensing some 770 of the UK's 1,700 insolvency practitioners as a Recognised Professional Body (RPB).

ICAEW is a Designated Professional Body (DPB) under the Financial Services and Markets Act 2000 (and previously a Recognised Professional Body under the Financial Services Act 1986) currently licensing approximately 2,300 firms to undertake exempt regulated activities under that Act.

ICAEW is an accredited body under the Financial Conduct Authority (FCA) Retail Distribution Review (RDR) arrangements.

ICAEW is designated an Approved Regulator and Licensing Authority for probate under the Legal Services Act 2007 (the Act).

ICAEW is a Supervisory Body recognised by HM Treasury for the purposes of the Money Laundering Regulations 2007 dealing with approximately 13,000 member firms.

ICAEW has both regulatory and membership functions which operate in a single unitary body. On occasions, representations may be made the regulatory and membership arm and this is one such occasions. A separate response in addition to this, has been made by the Business Law Committee of ICAEW

ICAEW is a world-leading professional accountancy body. We operate under a Royal Charter, working in the public interest. ICAEW's regulation of its members, in particular its responsibilities in respect of auditors, is overseen by the UK Financial Reporting Council. We provide leadership and practical support to over 145,000 member chartered accountants in more than 160 countries, working with governments, regulators and industry in order to ensure that the highest standards are maintained.

ICAEW members operate across a wide range of areas in business, practice and the public sector. They provide financial expertise and guidance based on the highest professional, technical and ethical standards. They are trained to provide clarity and apply rigour, and so help create long-term sustainable economic value.

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MAJOR POINTS

1. ICAEW supports the application Business Impact Target, Growth Duty and Small Business Appeals Champion to the Financial Reporting Council, the Insolvency Service and the Financial Conduct Authority.
2. It is our view that the body responsible for designing a legislative framework should be subject to the discipline of assessing the impact on business of its actions.
3. In its role as a regulator ICAEW is simply delivering government policy and is subject to the oversight of the Financial Reporting Council, the Insolvency Service and the Financial Conduct Authority. In this regard we see no benefit in ICAEW becoming subject to the Business Impact Target and the Growth Duty.
4. We have significant lay input in our regulatory and disciplinary processes which negates the need for a role for the Small Business Appeals Champion in those processes. And again, those processes are subject to review by the oversight bodies referred to above.

RESPONSES TO SPECIFIC QUESTIONS

5. We have limited our response to answering questions 1, 3, 5 and 7 in the context of ICAEW's role as a regulator.

Q1 Do you agree that the regulators listed in Annex A should be brought within scope of the Business Impact Target? Are there any others you think should be in scope? Please provide reasons for your answer.

Q3: Do you agree that the regulators listed in Annex B and the regulatory functions listed in the associated draft Statutory Instrument should be brought within scope of the Growth Duty? Are there any others you think should be in scope? Please provide reasons for your answer.

Q5: Do you agree that the regulators listed in Annex C and the regulatory functions listed in the associated draft Statutory Instrument should be brought within scope of the Small Business Appeals Champion? Are there any others you think should be in scope? Please provide reasons for your answer.

6. As you will be aware, in its role as a regulator ICAEW is subject to oversight by the Financial Reporting Council (FRC) the Insolvency Service (IS), the Financial Conduct Authority (FCA) and the Legal Services Board (LSB). As can be seen from Annex D of the consultation document, there is currently some variation in approach as to whether these bodies within the scope of the Business Impact Target, Growth Duty and Small Business Appeals Champion.

	Proposed to be brought in scope of the BIT?	Proposed to be brought in scope of Growth Duty?	Proposed to be brought in scope of the Small Business Appeals Champion?
Financial Conduct Authority	Yes	No ^[1]	No ^[2]
Financial Reporting Council	Yes	Already decided as in scope during last Parliament	Yes
Insolvency Service	Already in scope under SBEE Act	Already decided as in scope during last Parliament	Yes

^[1] The Financial Services Act 2012 already places duties on the FCA that are similar in intent to the Growth Duty.

^[2] The FCA has a dedicated Smaller Business Practitioner Panel, who can make representations on any area of policy, including complaints and appeals.

In the case of legal services the Legal Services Board is outside the remit of this consultation.

7. We welcome the proposals within the consultation document which would apply a uniform approach, or in the case of the FCA an equivalent approach, to all these bodies. We would expect that in turn, these bodies collectively would adopt a consistent approach to their oversight role. This would provide certainty to those such as ICAEW who are subject to that oversight and translates through to the businesses we regulate as a coherent and consistent set of rules reducing complexity and multiple accountability for those businesses
8. It is our view, that where government adopts a system of regulation where functions are delegated to organisations outside of government, but designs the regulatory framework via legislation or otherwise itself, government and the oversight bodies should be subject to the discipline of assessing the impact on business of their actions. As a regulator ICAEW delivers a system of regulation in audit, insolvency and non-mainstream investment business created by the relevant legislation and its oversight bodies, not on its own initiative.
9. We would not however, wish to see these bodies effectively delegate their responsibilities to those they oversee, by expecting regulators to gather data on their behalf to support an assessment of the impact of a measure on business or seek that the regulators issue guidance more suited to being issued by the oversight body.

Q7: Do you agree that there is a case for extending the Business Impact Target, Growth Duty and Small Business Appeals Champion to professional bodies? Please provide reasons for your answer.

10. No, we do not agree for three principal reasons;
 - The risk of over-regulation for statutory obligations lies with the oversight bodies and not with the professional bodies
 - The voluntary regulation of the bodies does not ordinarily inhibit the free operation of market and the choice for the consumer
 - The governance of the professional bodies can play a part in securing the outcomes being sought by the initiatives without having to bear the new administrative burdens

These are discussed in turn below.

Statutory regulation

11. It is our view that the appropriate mechanism to apply the Business Impact Target, Growth Duty and Small Business Appeals Champion to the areas in which ICAEW functions as a statutory regulator is via the inclusion of the FRC, IS and FCA within scope, and where relevant the LSB.
12. As noted above, as a regulator ICAEW delivers a system of regulation in audit, insolvency and non-mainstream investment business created by the relevant legislation. Adopting the principles of better regulation, we do not seek to “gold plate” our own regulations, rather our focus is on delivering a system of regulation closely aligned to that set out in statute. Our view would be that our actions in this regard would have no additional impact on business beyond that already assessed by government and the oversight bodies referred to above.
13. ICAEW’s population of firms are of course businesses of all sizes, ranging from sole practitioners to global accountancy practices with offices worldwide. ICAEW by the nature and variety of its regulatory functions has a similarly varied regulated population and it is possible that a practice could be regulated by ICAEW for seven different service lines. But many of the users of the services provided by firms regulated by ICAEW will themselves be businesses. In our view government is best placed to assess whether the benefit to the wider business community of a policy initiative outweighs the burdens that will be imposed on regulated businesses as government will be the architects of the underlying policy.
14. There are additional checks built into our regulatory framework in that in most instances, the oversight regulators must approve changes to the relevant regulations. This gives those bodies a further opportunity to assess the impact of regulatory change on business.

15. It should be noted that ICAEW is a statutory regulator not just for functions in the UK, but overseas for audit in the Republic of Ireland and the Crown Dependencies and for taxation in Australia. Imposition of the Business Impact Target could interfere with the delivery of these statutory duties and potentially require relinquishment of those roles.

Voluntary regulation

16. Voluntary regulation is part and parcel of the make up and raison d'être of a professional body. The Benson Principles, seen as defining a professional body, include standards of behaviour, quality and enforcement. The professional body is meant to provide a quality choice in the market place where the consumer can be sure of a certain quality of service delivery. That delivery costs more because the businesses that trade under that quality badge have to fund a regulatory cost for compliance. But the consumer equally has the choice not to go for quality and choose a cheaper supplier that does not have those cost burdens.
17. The position is recognised as being different where there is monopoly for the professional body, as has the case for example for the supply of certain reserved legal services, because there the consumer does not have the choice. However in the case of accountancy, business has the choice to operate with the quality badge and meet the financial and performance obligations, or simply operate outside it without those obligations and without the badge. This is part of the principles of the free market and part of consumer choice. We would find requirements to account financially for regulations in this area paradoxical with the purposes for which they were created.
18. The key accountability for professional bodies' voluntary regulation is to members, and those members are the businesses to which the regulation is applied. Where it appears disproportionate or excessive those members have the ability to challenge through their constitution and seek changes. There is therefore a constant temper on the extent that professional bodies will apply their voluntary regulation. Ironically the separate proposals being considered by the Legal Services Board to separate regulatory and member arms of a professional body would sever that accountability and damage the outcomes that are being sought by the Business Impact Target and Small Business Appeals Champion initiatives.

Governance

19. The Small Business Appeals Champion process is intended to give a voice to business to enable it to push back and make heard misgivings about the over-complexity and burden of regulation. This accountability we believe to be an important principle, but it can be achieved by means other than that of champions, particularly in the professional bodies which are themselves champions for the businesses they represent. In those instances the governance of those bodies is an important factor in determining whether the tiller controlling light touch but effective regulation is being properly applied. In particular a balance needs to be struck between the consumer and public protection that the law and regulations are attempting to apply and the need for business to be able commercially to provide that service.
20. ICAEW has recently conducted a review of its regulatory governance. One of the outcomes of that review was the creation of a new ICAEW Regulatory Board (IRB). The IRB is responsible for overseeing the professional standards activities and statutory regulatory role of ICAEW including the development of policies, actions and the regulatory plan. The IRB has parity of lay members and ICAEW members, with the recruitment of lay members focussing on users of accountancy services. The make-up of the IRB means that any changes to our regulations will be considered by a group who will be able to assess the impact of these changes on business as users of accountancy services and the impact on ICAEW regulated firms which are of course themselves businesses. Built into the terms of reference for the IRB is a mechanism whereby ICAEW's wider membership may feedback comment on the approach taken by ICAEW as a regulator, again giving an opportunity for the impact of regulation on ICAEW firms as businesses to be considered.
21. Another consequence of ICAEW's review of its regulatory governance has been a move to lay parity and in some circumstances, lay majority for our regulatory and disciplinary committees as set out below:

Committee	Constitution
Audit Registration Committee	Lay parity
Insolvency Licensing Committee	Lay parity
Investment Business Committee	Lay parity
Probate Committee	Lay majority
Investigation Committee	Lay parity
Review Committee	Lay majority
Disciplinary Tribunals	Lay majority
Appeal Panel	Lay majority

22. This means that decisions in our disciplinary and regulatory processes benefit from a balanced view by a mix of technical specialists and lay members, with the ICAEW members being drawn from practices of all sizes. Our processes, therefore, already reflect many if not all of the aims of the Small Business Champion. Again, there is a role for our oversight bodies in that they periodically review our regulatory and disciplinary processes, and are already able to make recommendations for change should they believe these processes have a negative effect on business.