



ICAEW REPRESENTATION 109/16 REGULATORY REPRESENTATION

SRA consultation on proposals to remove barriers to switching regulators

ICAEW Professional Standards welcomes the opportunity to comment on a consultation by the Solicitors Regulation Authority (SRA) *Removing barriers to switching regulators*, which was issued on 21 April 2016 and is available at this [link](#).

ICAEW is a world-leading professional accountancy body. We operate under a Royal Charter, working in the public interest. 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.

ICAEW was granted status as an approved regulator and licensing authority for the reserved legal activity of probate in August 2014. Since that time it has authorised and licensed over 200 accountancy and other firms as probate practitioners and alternative business structures (ABSs).

In addition ICAEW as a regulatory body is:

- (a) the largest Recognised Supervisory Body (RSB) and Recognised Qualifying Body (RQB) for statutory audit in the UK, registering approximately 3,300 firms and 8,400 responsible individuals under the Companies Act 1989 and 2006.
- (b) the largest Prescribed Accountancy Body (PAB) and Recognised Accountancy Body (RAB) for statutory audit in Ireland, registering approximately 3,300 firms and 7,500 responsible individuals under the Companies Act 2014.
- (c) the largest single insolvency regulator licensing some 750 insolvency practitioners as a Recognised Professional Body (RPB) under the Insolvency Act 1986 out of a total UK population of 1,700.
- (d) a Designated Professional Body (DPB) under the Financial Services and Markets Act 2000 currently licensing approximately 2,300 firms to undertake exempt regulated activities under that Act.
- (e) a Supervisory Body recognised by HM Treasury for the purposes of the Money Laundering Regulations 2007 dealing with approximately 13,000 member firms.
- (f) an accredited body under the Financial Conduct Authority (FCA) Retail Distribution Review (RDR) arrangements.

In discharging these duties ICAEW is subject to oversight by the Legal Services Board (LSB) the Financial Reporting Council's Conduct Committee, the Financial Conduct Authority, the Irish Auditing and Accounting Supervisory Authority (IAASA) and the Insolvency Service.

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1. We welcome this consultation by the Solicitors Regulatory Authority (SRA) on proposals to amend its professional indemnity insurance (PII) requirements for firms wishing to switch regulators. The SRA proposes to remove the requirement on firms to take out 6 years run-off cover in cases where firms cease to be regulated by the SRA and move to another approved regulator.
2. Since 2014 ICAEW has been an approved regulator and licensing authority for probate activities under the Legal Services Act 2007 (the Act). Currently ICAEW is in the process of applying to the Legal Services Board (LSB) for approval to regulate the other five reserved legal activities under the Act¹. As one of 8 approved legal services regulators in England and Wales we strongly support efforts by the SRA to remove regulatory barriers to firms wishing to move regulators for valid commercial and/or strategic reasons. This is consistent with the Act's regulatory objectives of improved competition and access to justice and is an effort by the SRA to reduce duplication and unnecessary regulation on firms that is not in the interests of consumers.

Proposal

3. Under the SRA's present minimum terms and conditions (MTCs) firms wishing to switch regulators are treated as if they have ceased to practise, automatically triggering a requirement to obtain 6 years' run-off cover. Firms are required to comply with this obligation even if they move to another approved regulator and take out replacement PII which provides cover for work carried out in the past (referred to as 'retroactive cover'). In the consultation the SRA states that the premium that is payable by firms for such run-off cover is typically around three times the firm's annual premium, although premium levels will vary depending upon the firm's particular circumstances.
4. The SRA is proposing to vary the terms of its agreement with participating insurers to allow the run-off cover requirement to be waived where a firm is moving to another approved regulator. This is to complement its existing power to issue waivers to firms in respect of this obligation in appropriate cases.
5. We would respond to the four questions set out in its consultation document as follows:

Question 1: Do you agree that we should remove the obligation for run-off cover when a firm switches from the SRA to another Approved Regulator?

6. We strongly support this proposal by the SRA to amend its run-off requirements for firms wishing to move regulators. We consider that this initiative is consistent with section 52(1) of the Legal Services Act which imposes an obligation on approved regulators to "make such provision as is reasonably practicable to avoid regulatory conflicts" with the arrangements of another approved regulator.
7. Firms which we accredit for probate are required to comply with ICAEW's PII regulations but hold a minimum level of cover of £500k per claim in connection with claims arising out of probate and estate administration. As is the case with all firms that engage in public practice, ICAEW requires accredited probate firms to hold cover with a participating insurer, which complies with the requirements of our minimum approved wording and provides retroactive cover of at least 6 years (ie, cover for claims in relation to any civil liability arising out of the conduct of professional business by the firm in the last 6 years).
8. Our regulatory arrangements, including our requirements for mandatory PII, were approved by the LSB as the oversight regulator in 2014 when we received designation as an approved

¹ Namely the conduct of litigation, rights of audience, reserved instrument activities, notarial activities and the administration of oaths (although the application in respect of the conduct of litigation, rights of audience and reserved instrument activities is limited to these activities where they relate to the supply of taxation services only).

regulator and licensing authority for probate. It is the LSB's role to approve the regulatory arrangements of each approved regulator and in determining such requests it has regard to the specific circumstances surrounding the conduct of activities by practitioners in that market and perceived risks to the Act's regulatory objectives. It does not consider that 'one size fits all' in judging the appropriateness of bodies' regulatory arrangements due to the diversity of the legal services market and each body's regulated community.

9. For this reason we agree that the SRA should waive the requirement on insurers to provide automatic run-off cover for firms wishing to move regulators in appropriate cases. To maintain the requirement would result in duplication of firms' PII arrangements which poses a significant financial barrier to (particularly smaller) firms wishing to move regulators. This would be contrary to the Act's objectives of promoting competition and creating a more diverse legal services market, and would result in unnecessary cost for firms which is likely to be passed on to consumers. The initiative is also consistent with the challenge laid down for regulators in the Enterprise Act 2016 to remove unnecessary regulation on businesses and promote growth.

Question 2: If you have answered yes to Question 1, do you agree with our method for delivering this proposal?

10. Yes. As the SRA notes in the consultation there is a risk that consumer protection could be compromised if firms move regulators purely to reduce their compliance obligations. This in turn runs the risk of so-called 'regulatory arbitrage' if regulators then look to relax their requirements in order retain firms within their regulation.
11. Nonetheless a regulator's arrangements should not restrict the ability of firms to choose the regulator that best meets the needs of their business. This is in keeping with the intention of the Act which provides for multiple legal services regulators with different regulatory arrangements.
12. Nor do we think that it would not be appropriate for the SRA to assess the PII requirements of the other regulator for equivalence in considering requests for waiver. It is the LSB's role to assess the appropriateness of each body's regulatory arrangements. Further, as the SRA notes, firms' PII arrangements are not static and will change over time even if a firm remains with one regulator. Firms may increase or decrease their limit of indemnity (subject to prescribed minimum limits) and the scope of cover may change with changes to the minimum terms. Therefore from a consumer protection perspective there is no guarantee that the PII cover that will be available in the case of a claim will be the same as that held by the firm at the beginning of the engagement. This lends weight to the argument that the SRA need not concern itself with the firm's future PII arrangements once the firm is under the regulation of another body.
13. However we would recommend that in determining any request for waiver the SRA satisfy itself that the firm is not in fact ceasing and that the PII arrangements of the new approved regulator will require retroactive cover to be in place. Any firm seeking to move to the ICAEW will need for example PII that provides at least 6 years retroactive cover. Should cover under a firm's future policy only apply from the date when it moves across to the other regulator, run-off cover would need to be in place to ensure appropriate consumer protection.

Question 3: Do you have any further comments on our proposal or on the changes to the PIA or terms of the core waiver proposed?

14. We have no further comments on the proposals.

Question 4: Do you have any views about our assessment of the impact of these changes and are there any impacts, available data or evidence that we should consider in developing our impact assessment?

15. We agree with the SRA's impact assessment that these changes are likely to affect smaller firms as larger firms are likely to have PII cover in excess of the minimum requirements set down by the approved regulators. The proposals should improve competition in the market by reducing cost and enabling firms to choose the regulator that is most appropriate for their business. This should support growth and innovation in the market amongst both traditional providers of legal services and alternative business structures. It should also have a flow on beneficial effect for consumers by reducing cost while not compromising on consumer protection if retrospective cover is in place under the new regulator's arrangements. We consider this proposal to have few risks and would encourage the SRA to proceed with the proposal in accordance with the timetable set out in the consultation.