

2009 No. 3233

LEGAL SERVICES, ENGLAND AND WALES

PROBATE SERVICES, ENGLAND AND WALES

The Legal Services Act 2007 (Approved Regulators) Order 2009

Made - - - - *8th December 2009*
Laid before Parliament *8th December 2009*
Coming into force - - *30th December 2009*

The Lord Chancellor makes the following Order in exercise of the powers conferred by section 208(2) of, and paragraph 5(2) and (5)(b) of Schedule 22 to, the Legal Services Act 2007(a).

The Lord Chancellor has made orders in respect of the Council for Licensed Conveyancers and the Institute of Chartered Accountants of Scotland(b) and the Association of Chartered Certified Accountants(c) under paragraph 4 of Schedule 9 to the Courts and Legal Services Act 1990(d), in accordance with paragraph (5)(1)(c) of Schedule 22 to the Legal Services Act 2007.

Citation, commencement and interpretation

1.—(1) This Order may be cited as the Legal Services Act 2007 (Approved Regulators) Order 2009 and comes into force on 30th December 2009.

(2) In this Order “the 2007 Act” means the Legal Services Act 2007.

Amendments to the 2007 Act

2. The 2007 Act is amended as follows.

3. In the Table in paragraph 1 of Schedule 4—

- (a) in the entry relating to the “The Council for Licensed Conveyancers”, in the second column after “The administration of oaths.” insert “Probate activities.”;
- (b) at the end insert—

“The Institute of Chartered Accountants of Scotland	Probate activities.
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The Association of Chartered Certified Accountants	Probate activities.”
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(a) 2007 c. 29.
(b) S.I. 2008/1865.
(c) S.I. 2009/1588.
(d) 1990 c.41.

4. After paragraph 2 of Schedule 5 insert—

“Probate activities

2A.—(1) This paragraph applies to a person who, immediately before the time paragraph 1 of Schedule 4 comes into force, has an exemption from the provisions of section 23(1) of the Solicitors Act 1974 (c. 47) (preparation of papers for probate etc by unqualified person) granted by a body within sub-paragraph (3).

(2) For the purposes of section 18, the person is to be treated as if the exemption were an authorisation to carry on probate activities granted by the body in question at the time paragraph 1 of Schedule 4 comes into force.

(3) The bodies are—

- (a) The Council for Licensed Conveyancers;
- (b) The Institute of Chartered Accountants of Scotland;
- (c) The Association of Chartered Certified Accountants.”.

Transitional provision in respect of Licensed Conveyancers

5.—(1) During the transitional period, a person (“P”) is an exempt person in relation to the carrying on of probate activities, if—

- (a) P carries on probate activities by virtue of an employee of P (“E”) carrying them on in E’s capacity as such an employee, and
- (b) E holds a probate licence granted by the Council for Licensed Conveyancers.

(2) If P is a body, in this article references to an employee of P include references to a manager of P.

(3) A probate licence is a licence granted by the Council for Licensed Conveyancers by virtue of section 53 of the Courts and Legal Services Act 1990 (c. 41) which authorises the person to whom it is granted to carry on probate activities (including a licence treated as so authorising the person by virtue of paragraph 2A of Schedule 5 to the 2007 Act).

(4) Reference in paragraph (1) to “the transitional period” is to the period which—

- (a) begins with 1st January 2010, and
- (b) ends with the day appointed by the Lord Chancellor under paragraph 3(1)(b) of Schedule 5 to the 2007 Act for the purposes of paragraph 11(3) of that Schedule.

Transitional provision in respect of Chartered Accountants of Scotland

6.—(1) During the transitional period, a person (“P”) is an exempt person in relation to the carrying on of probate activities, if—

- (a) P carries on probate activities by virtue of an employee of P (“E”) carrying them on in E’s capacity as such an employee, and
- (b) E is authorised by the Institute of Chartered Accountants of Scotland to carry on probate activities.

(2) If P is a body, in this article references to an employee of P include references to a manager of P.

(3) For the purposes of paragraph (1)(b) the reference to a person who is authorised by the Institute of Chartered Accountants of Scotland includes a person who for the purposes of section 18 of the 2007 Act is treated as so authorised by virtue of paragraph 2A(2) of Schedule 5 to that Act.

(4) Reference in paragraph (1) to “the transitional period” is to the period which—

- (a) begins with 1st January 2010, and

- (b) ends with the day appointed by the Lord Chancellor under paragraph 3(1)(b) of Schedule 5 to the 2007 Act for the purposes of paragraph 11(3) of that Schedule.

Transitional provision in respect of Chartered Certified Accountants

7.—(1) During the transitional period, a person (“P”) is an exempt person in relation to the carrying on of probate activities, if—

- (a) P carries on probate activities by virtue of an employee of P (“E”) carrying them on in E’s capacity as such an employee, and
- (b) E is authorised by the Institute of Chartered Certified Accountants to carry on probate activities.

(2) If P is a body, in this article references to an employee of P include references to a manager of P.

(3) For the purposes of paragraph (1)(b) the reference to a person who is authorised by the Institute of Chartered Certified Accountants includes a person who for the purposes of section 18 of the 2007 Act is treated as so authorised by virtue of paragraph 2A(2) of Schedule 5 to that Act.

(4) Reference in paragraph (1) to “the transitional period” is to the period which—

- (a) begins with 1st January 2010, and
- (b) ends with the day appointed by the Lord Chancellor under paragraph 3(1)(b) of Schedule 5 to the 2007 Act for the purposes of paragraph 11(3) of that Schedule.

Signed by the authority of the Lord Chancellor

8th December 2009

Bridget Prentice
Parliamentary Under Secretary of State
Ministry of Justice

EXPLANATORY NOTE

(This note is not part of the Order)

The Lord Chancellor makes this Order having made two previous Orders, The Probate (Approved Bodies) Order 2008 (S.I. 2008/1865) and The Probate (Approved Bodies) Order 2009 (S.I. 2009/1588). The former designates the Council for Licensed Conveyancers (“CLC”) and the Institute of Chartered Accountants of Scotland (“ICAS”) and the latter the Association of Chartered Certified Accountants (“ACCA”) as approved bodies for the purposes of exempting their members from section 23 of the Solicitors Act 1974, so enabling their members to provide probate activities for a fee.

Consequently, this Order amends the Legal Services Act 2007 (“the Act”) so that ICAS and ACCA are recognised as approved regulators under the Act by including them in the table of approved regulators in paragraph 1 of Schedule 4 to the Act. This Order adds probate activities to the list of reserved legal activities in that table in respect of ICAS, ACCA and the CLC.

This Order makes transitional provision to allow a person (“P”), who carries out probate activities by virtue of employing a person (“E”) who has been granted an exemption to carry out probate activities by ICAS, ACCA and CLC, to be exempt from authorisation under the Act for a transitional period.

An impact assessment has not been prepared for this Order but a full regulatory impact assessment was prepared for the Legal Services Bill in November 2006, supplemented in 2007. Copies of these documents are annexed to the Explanatory Memorandum which is available alongside this instrument on the OPSI website.

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