EXPLANATORY MEMORANDUM TO

THE LEGAL SERVICES ACT 2007 (APPEALS FROM LICENSING AUTHORITY DECISIONS) (CHARTERED INSTITUTE OF PATENT ATTORNEYS AND INSTITUTE OF TRADE MARK ATTORNEYS) ORDER 2014

2014 No. [DRAFT]

1. This explanatory memorandum has been prepared by the Ministry of Justice and is laid before Parliament by Command of Her Majesty.

2. Purpose of the instrument

2.1 This instrument makes provision for the First-tier Tribunal to act as the appellate body for the purpose of appeals from decisions made by the Chartered Institute of Patent Attorneys ("CIPA") and the Institute of Trade Mark Attorneys ("ITMA") in their capacity as licensing authorities which are appealable under either Part 5 of the Legal Services Act 2007 ("the 2007 Act") or the CIPA and/or ITMA's own licensing rules.

3. Matters of special interest to the Joint Committee on Statutory Instruments

3.1 None.

4. Legislative Context

4.1 The 2007 Act sets out a framework for the regulation of legal services in England and Wales. It establishes the Legal Services Board ("the LSB") as the oversight regulator for this framework and requires that reserved legal activities may only be carried out by those who are authorised to do so, or exempt. It makes provision for the regulation by approved regulators of those providing reserved legal activities. CIPA and ITMA are already approved regulators for the reserved legal activities of the exercise of a right of audience, the conduct of litigation, reserved instrument activities and the administration of oaths.

4.2 Part 5 (alternative business structures) of the 2007 Act sets out arrangements under which approved regulators which have been designated as licensing authorities may license firms ("licensed bodies") which are partly or wholly owned or controlled by non-lawyers to provide legal services (or a mixture of legal and non-legal services). Part 1 of Schedule 10 to the 2007 Act allows the Lord Chancellor, on the recommendation of the LSB, to designate approved regulators as licensing authorities for the purpose of Part 5. It is anticipated that CIPA and ITMA will become licensing authorities around the end of 2014 for the four reserved legal activities for which they are currently approved regulators.

4.3 The LSB may not grant an application (which would then be recommended to the Lord Chancellor) to become a licensing authority in relation to a reserved legal activity unless it is satisfied that there would be a body with the power to hear and determine appeals (paragraph 11 of Schedule 10 of the 2007 Act).

4.4 Section 80 allows the Lord Chancellor, on the LSB's recommendation, to establish appellate bodies or modify the functions of existing bodies to allow them to hear licensing appeals. As noted above, this Order makes provision for the First-tier Tribunal to hear appeals from the CIPA and ITMA (acting jointly or separately) in their capacity as licensing authorities. There has been one similar previous Order, relating to the Council for Licensed Conveyancers in its capacity as a licensing authority (S.I 2011/1712).

5. Territorial Extent and Application

5.1 This instrument applies to England and Wales.

6. European Convention on Human Rights

6.1 The Parliamentary Under-Secretary of State, Shailesh Vara MP, has made the following statement regarding Human Rights:

"In my view the provisions of the Legal Services Act 2007 (Appeals from Licensing Authority Decisions) (Chartered Institute of Patent Attorneys and Institute of Trade Mark Attorneys) Order 2014 are compatible with the Convention rights."

7. Policy background

- ***What is being done and why***

7.1 This Order gives the First-tier Tribunal the power to hear and determine appeals from the decisions of the CIPA and ITMA (acting jointly or separately) under Part 5 of the 2007 Act and its licensing rules. It also sets out what the First-tier Tribunal may do on appeals from decisions made under licensing rules. It also modifies the 2007 Act so that these appeals fit within the existing structure of onward appeals from the First-tier Tribunal to the Upper Tribunal.

7.2 The CIPA and ITMA have elected to use the First-tier Tribunal as their appellate body for the purposes of Part 5 of the 2007 Act on the basis that this is likely to provide a more efficient service. The CIPA and ITMA have agreed to meet the costs associated with the establishment of, and the annual running costs of, the appeal mechanism, which will be incorporated as an element of the license fee charged to licensed bodies. A Memorandum of Understanding between the CIPA and ITMA and Her Majesty's Courts and Tribunals Service (HMCTS) has been put in place.

- ***Consolidation***

7.3 This is a standalone Order which does not make amendments to any other SI, so no question of consolidation arises.

8. Consultation outcome

8.1 Section 80(3) provides that the Lord Chancellor may make an order under section 80 only if the LSB has made a recommendation that he does so. Under section 81 of the 2007 Act, that recommendation may be made only with the consent of the body whose decisions are to be appealed, and with the consent of the body to which appeals are to be made. Before making the recommendation, the LSB must publish the proposed recommendation and draft order and have regard to any representations made.

8.2 The LSB has satisfied these requirements. The LSB consulted on its draft application for 6 weeks (March to April 2014). The consultation received one response from the Chief Executive of the Institute of Trade Mark Attorneys to say that ITMA supported the proposals and had no comments on the Order or impact assessment.

8.3 Taking into account comments from the consultation, the LSB made a recommendation to the Lord Chancellor for an Order to be made.

9. Guidance

9.1 The LSB has issued guidance to licensing authorities under section 162 of the 2007 Act on the content of licensing rules. The guidance specifies those decisions which, as a minimum, the LSB considers ought to be appealable. These include: refusal of application for a licence; imposition of conditions on a licence; modification of a licence; refusal to designate as a Head of Legal Practice or withdrawal of approval; disqualification from some or all roles within a licensed body; suspension and revocation of licence; and power to modify application of licensing rules etc to special bodies.

10. Impact

10.1 There is no impact on charities or voluntary bodies. Any business impact will relate to the CIPA and ITMA (acting jointly or separately).

10.2 Although HMCTS will face additional costs associated with a potential increase in cases heard at the Tribunal, the CIPA and ITMA will meet the set up and operating costs, so there will be no net financial impact on the public sector.

10.3 An Impact Assessment has been prepared specifically for this instrument and is attached. A full regulatory impact assessment (RIA) was prepared for the Legal Services Bill in November 2006 and can be found at http://www.dca.gov.uk/risk/ria-legal-services.pdf. A further full RIA, together with a detailed Equality Impact Assessment, was prepared in relation to S.I. 2011/2196 which commenced Part 5 of the 2007 Act, and this can be found at: http://www.legislation.gov.uk/uksi/2011/2196/introduction/made.

11. Regulating small business

11.1 This instrument is not expected to have any disproportionate impact on small firms.

12. Monitoring and review

12.1 The appeal arrangements will be monitored by the Tribunals Service. The LSB, as oversight regulator of the legal services industry, will keep the regulatory arrangements under review.

13. Contact

Please contact Mel Panteli at the Ministry of Justice (Tel: 0203 334 6147 or email: Mel.Panteli5@justice.gsi.gov.uk) about any queries regarding this instrument.