EXPLANATORY MEMORANDUM TO

THE LEGAL SERVICES ACT 2007 (APPEALS FROM LICENSING AUTHORITY DECISIONS) (INSTITUTE OF CHARTERED ACCOUNTANTS IN ENGLAND AND WALES) 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 Institute of Chartered Accountants in England and Wales ("the Institute") in its capacity as a licensing authority which are appealable under either Part 5 of the Legal Services Act 2007 ("the 2007 Act") or the Institute'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. The Institute has applied to the LSB to be approved in relation to the reserved legal activity of probate activities and will shortly be designated as an approved regulator by an Order made by the Lord Chancellor. It is anticipated that the designation Order will come into force at the same time as this Order.

4.2 Part 5 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 the Institute will become a licensing authority for probate activities shortly after this Order comes into force.

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 Institute in its capacity as a licensing authority. 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) (Institute of Chartered Accountants in England and Wales) 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 Institute 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 Institute has elected to use the First-tier Tribunal as its 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 Institute has 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 Institute 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. On 19 March the LSB published a draft of the proposed recommendation and proposed draft Order and invited representations to be made by 17 April. No representations were received.

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.

10.2 Although HMCTS will face additional costs associated with a potential increase in cases heard at the Tribunal, the Institute 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 (IA) has been prepared specifically for this instrument. The IA is attached and will be published alongside this Explanatory Memorandum on www.legislation.gov.uk.

10.4 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 John Russell at the Ministry of Justice (Tel: 0203 334 3626 or email: John.Russell2@justice.gsi.gov.uk) about any queries regarding this instrument.