EXPLANATORY MEMORANDUM TO

THE LEGAL SERVICES ACT 2007 (APPROVED REGULATOR) 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 Order designates the Institute of Chartered Accountants in England and Wales ("the Institute") as an approved regulator under the Legal Services Act 2007 ("the Act"), for the reserved legal activity of probate activities. This will enable the Institute to permit properly qualified and trained members to conduct probate work, such as applications for a grant of probate or letters of administration, in line with its regulatory arrangements which have been approved by the Legal Services Board (LSB).

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

3.1 None.

4. Legislative Context

4.1 This instrument is made under paragraph 17(1)(a) of Schedule 4 to the Act, which allows the Lord Chancellor to make an Order in accordance with a recommendation by the Legal Services Board (under paragraph 16(2) of Schedule 4) that an Order be made designating an applicant as an approved regulator in relation to a specified reserved legal activity or activities.

4.2 Schedule 4 to the Act provides for bodies wishing to authorise persons to carry out a reserved legal activity to apply to the Legal Services Board to become an approved regulator for the specified activity or activities. The approval procedure for such applications is set out in Schedule 4.

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 (Approved Regulator) Order 2014 are compatible with the Convention rights."

7. Policy background

What is being done and why

7.1 The Institute is a regulator and professional membership body for the accountancy profession in England and Wales. It provides leadership and practical support to its UK and international members and professional standards are maintained through working closely with governments, regulators and the industry. It also undertakes education and training to support students studying to become chartered accountants.

7.2 The Institute have advised that a number of its members are already engaged in some of the activities related to probate work such as advising on trust planning and inheritance tax. These related activities fall outside the scope of the reserved legal activity definition of probate activities in the Act.

7.3 This Order will enable the Institute to operate as an approved regulator for probate activities. The Institute may then provide consumers with access to a complete service of probate activities through their authorised members. Firms will be able to apply to the Institute for authority to deliver probate services as accredited probate firms. Individuals working within these entities who wish to conduct or supervise probate work will also be able to apply to the Institute for approval as "authorised persons".

7.4 Paragraph 6 of Schedule 2 to the Act defines probate activities as the preparation of probate papers for the purposes of the law or in relation to any proceedings in England and Wales.

Consolidation

7.5 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 There have been two consultation periods. Firstly, the Institute consulted on its draft application for designation as an approved regulator for probate for 10 weeks during 2012 (between June and September 2012), before making the application to the LSB. The consultation received a total of 8 responses from members, the Legal Services Consumer Panel and the Law Society.

8.2 Six of those responses were from the Institute members and they did not raise any significant issues. The Law Society responded stating that they would reserve their

comments until after the application has been submitted formally to the LSB. The Legal Services Consumer Panel welcomed this application, as it supported the Panel's aim of competition between diverse providers within a regulated market place. They were particularly pleased to see that the Institute will authorise any competent provider, not just accountancy firms, although this also alters the nature of the risks and the consumer protections needed. However, they were disappointed that the Institute was not proposing to have a majority of lay members on their Probate Committee or Disciplinary Committee as the Panel felt this was needed to ensure public confidence and deliver better quality regulation.

8.3 In response to the Panel, the Institute redrafted their regulations so that the Probate Committee was made up of ten members, with a 50:50 split between lay and non-lay members and a casting vote for a lay Chairman. However, the Institute are not at this time proposing to alter the membership of the Disciplinary Committee, although they will keep this under review.

8.4 During the consultation period the Institute met with the Chief Ombudsman for legal complaints (appointed under section 122 of the Act). The Chief Ombudsman provided comments on the draft regulations, which were incorporated into the revised application. Representatives of the Lord Chief Justice's office did not consider it appropriate to meet prior to the formal submission of the application to the LSB. Officials from the Office of Fair Trading also considered a meeting unnecessary as no possible competition issues in relation to the application had been identified at that stage.

8.5 Secondly, once the Institute had made its designation application to the LSB, the LSB consulted with the statutory consultees under paragraph 5 of Schedule 4 to the Act: the Office of Fair Trading, the LSB Consumer Panel, and the Lord Chief Justice (whose views the Institute had already sought as outlined above). After this formal consultation period ended, the Law Society wrote to the LSB expressing a number of concerns and setting out their view that the application from the Institute did not meet the regulatory requirements. The LSB sent a copy of this letter to the Institute, who replied addressing each of the concerns raised.

8.6 The LSB also consulted with two other consultees; the Financial Reporting Council and the Insolvency Service. Both the Council and the Service noted that the Institute takes its regulatory responsibilities very seriously and both supported the application.

9. Guidance

9.1 The LSB has issued guidance to approved regulators under section 162 of the Act. A copy of this guidance can be found at: http://www.legalservicesboard.org.uk/what_we_do/regulation/reg_pol.htm.

10. Impact

10.1 There is no impact on charities or voluntary bodies.

10.2 There will be no impact on the public sector.

10.3 An Impact Assessment has not been carried out for this Order as its provisions are consistent with the policy of the Act and do not impose additional burdens on the private and voluntary sector. 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.

11. Regulating small business

11.1 This order does not apply to small business.

12. Monitoring & review

12.1 The LSB, in their role as oversight regulator, will monitor the arrangements in the same way as they already monitor the work of the other approved regulators who have previously been designated as such.

13. Contact

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