**EXPLANATORY MEMORANDUM TO**

**THE LEGAL SERVICES ACT 2007 (APPROVED REGULATOR) ORDER 2023**

**2023 No. XXXX**

## 1. Introduction

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

## 2. Purpose of the instrument

2.1 This instrument cancels the Association of Chartered Certificated Accountants ("ACCA") designation as an approved regulator for probate activities.

## 3. Matters of special interest to Parliament

***Matters of special interest to the Joint Committee on Statutory Instruments***

3.1 None.

## 4. Extent and Territorial Application

4.1 The territorial extent of this instrument is England and Wales.

4.2 The territorial application of this instrument is England and Wales.

## 5. European Convention on Human Rights

5.1 The Minister of State for Courts and Legal Services, Mike Freer MP, has made the following statement regarding Human Rights:

"In my view the provisions of The Legal Services Act 2007 (Approved Regulator) Order 2023 are compatible with the Convention rights."

## 6. Legislative Context

6.1 Under section 45(1) of the Legal Services Act 2007 (2007 Act), the Lord Chancellor may make an Order to cancel the designation of an approved regulator in relation to the reserved legal activities regulators can carry out. Under section 45(2) of the 2007 Act, such an Order may only be made if such a recommendation is made by the Legal Services Board (LSB) to the Lord Chancellor in accordance with sections 45(3) or (5). The reserved legal activities set out in the 2007 Act are: the exercise of a right of audience, the conduct of litigation, reserved instrument activities, probate activities, notarial activities and the administration of oaths.

6.2 Section 45(3) of the 2007 Act deals with the process whereby a designation is cancelled at the request of an approved regulator. The approved regulator may submit an application to the Legal Services Board (LSB) to request cancellation of its designation. The application must be submitted in line with any rules made by the LSB in relation to the cancellation of designations of approved regulators and is accompanied by a prescribed fee. The approved regulator must also publish a notice setting out the details of the application. Once the LSB has reviewed an application satisfying this criteria, it must recommend that the Lord Chancellor makes an Order cancelling an approved regulator's designation.

## 7. Policy background

***What is being done and why?***

7.1 This Order cancels the designation of the ACCA as an approved regulator of probate activities.

7.2 Section 45 of the 2007 Act contains powers to designate bodies as approved regulators for certain legal activities, and to cancel those designations on the recommendation of the LSB. In 2009, the ACCA was designated as an approved regulator for probate activities.

7.3 On 21 October 2021, the ACCA applied for the LSB to recommend cancellation of its designation due to the low number of practitioners who were working in probate and a cost-benefit analysis which revealed that the designation is not in the financial interests of the ACCA. The ACCA's main area of business is the regulation of accounting.

7.4 The ACCA has worked with CILEX Regulation (CRL) to put in place transfer arrangements for probate practitioners wishing to continue to provide probate activities. The ACCA's previously regulated community providing probate activities have already transferred to other regulators or ceased to practise.

7.5 The ACCA has undertaken all of the relevant steps to communicate the changes with those affected. It ceased accepting new applications for probate authorisation in 2021, issued cessation letters to all affected authorised persons in January 2022, and no longer holds practising fees which would need to be transferred to another approved regulator.

## 8. European Union Withdrawal and Future Relationship

8.1 This instrument does not relate to the withdrawal from the European Union or trigger the statement requirements under the European Union (Withdrawal) Act.

## 9. Consolidation

9.1 This Order does not seek to consolidate or revoke any existing Orders.

## 10. Consultation outcome

10.1 A formal consultation is not required given that there is no statutory duty to consult and the LSB took the required steps prior to recommending the cancellation of the ACCA's designation.

## 11. Guidance

11.1 There is no guidance required because the ACCA's previously regulated community have already transferred to other legal services regulators or ceased to practise.

## 12. Impact

12.1 There is no, or no significant, impact on business, charities or voluntary bodies.

12.2 There is no, or no significant impact on the public sector.

12.3 An Impact Assessment has not been prepared for this policy because cancelling the designation of the ACCA does not impose new costs or regulatory burdens on

businesses and is not a regulatory provision under Section 22(3) of the Small Business, Employment and Enterprise Act 2015.

## 13. Regulating small business

13.1 The legislation does not apply to activities that are undertaken by small businesses (e.g., small accountancy firms and sole practitioners). This is because the ACCA ceased to accept new applications for probate authorisation in 2021, issued cessation letters to all affected authorised persons in January 2022, and no longer holds practising fees to authorise the provision of probate activities.

## 14. Monitoring & review

14.1 There is no plan to monitor or review this SI.

## 15. Contact

15.1 Laurene Rousseau at the Ministry of Justice, email: laurene.rousseau@justice.gov.uk can be contacted with any queries regarding the instrument.

15.2 John Heavens, Deputy Director for Legal Services Policy at the Ministry of Justice, can confirm that this Explanatory Memorandum meets the required standard.

15.3 Minister Mike Freer at the Ministry of Justice can confirm that this Explanatory Memorandum meets the required standard.