EXPLANATORY MEMORANDUM TO

THE LEGAL SERVICES ACT 2007 (THE INSTITUTE OF CHARTERED ACCOUNTANTS IN ENGLAND AND WALES) (MODIFICATION OF FUNCTIONS) 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 The purpose of this instrument is to modify the functions of the Institute of Chartered Accountants in England and Wales ("the Institute") in relation to its regulatory arrangements, within the meaning of section 21 of the Legal Services Act 2007 ("the 2007 Act").

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

3.1 None.

4. Legislative Context

4.1 The 2007 Act governs the regulation of legal services in England and Wales. Under the 2007 Act, only a person who is authorised by an approved regulator, or who is exempt from the requirement to be authorised, may carry on a reserved legal activity as defined in section 12 of that Act. Approved regulators are responsible for ensuring that the persons authorised by them act in a way that is consistent with the regulatory objectives set out in the 2007 Act. Part 2 of the 2007 Act established the Legal Services Board ("the LSB") as the oversight regulator with responsibility for approved regulators. The approved regulators and the reserved legal activities in relation to which they are designated are set out in Part 1 of Schedule 4 and in designation orders made under Schedule 4. Part 2 of Schedule 4 allows for bodies to apply to the LSB to be recommended to the Lord Chancellor for designation as an approved regulator in relation to one or more of the reserved legal activities. The Institute was designated as an approved regulator for probate activities by S.I. 2014/1872, which came into force on 18 July 2014.

4.2 Schedule 10 of the 2007 Act provides that an approved regulator may also be designated by the Lord Chancellor as a licensing authority. Licensing authorities may authorise (license) bodies, known as alternative business structures, which are partly or wholly owned or controlled by non-lawyers to carry on reserved legal activities. Part 5 of the 2007 Act sets out arrangements under which licensing authorities may regulate such bodies. The Institute was designated as a licensing

authority for probate activities by S.I. 2014/1925, which came into force on 14 August 2014.

4.3 Section 69 of the 2007 Act, under which this Order is made, allows the Lord Chancellor to make an order modifying the functions of an approved regulator or other body. The purposes for which the LSB may make a recommendation to the Lord Chancellor to make an order are set out in section 69(3), and include (amongst other things) to allow the regulator to carry out its functions more effectively and efficiently. The LSB has issued a statement of policy setting out the circumstances in which it is likely to consider it appropriate to make such a recommendation[1]. This Order also uses the powers in section 64, which lists some of the matters which can be included in a section 69 order.

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 (The Institute of Chartered Accountants in England and Wales) (Modification of Functions) Order 2014 are compatible with the Convention rights."

7. Policy background

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

7.1 This Order makes provision under section 69 of the 2007 Act for the Institute to make rules or regulations providing for appeals to the First-tier Tribunal against decisions made by the Institute as an approved regulator and as a licensing authority (article 2). This will replace the current arrangements whereby appeals are dealt with by the Institute's Appeal Committee. The First-tier Tribunal has judges with experience in considering regulatory appeals. It also has the necessary rules and practical arrangements already in place for appeals of this nature, as well as expertise in dealing with them, and already has a jurisdiction within the General Regulatory Chamber which deals with appeals related to licensing authority decisions for the Council for Licensed Conveyancers. This is also in line with LSB policy for there to eventually be a single appellate body for all legal services regulators.

[1] This statement can be found at http://www.legalservicesboard.org.uk/what_we_do/consultations/closed/pdf/Statement_of_Policy-s69_Orders.pdf or obtained from Consultation Co-ordinator, Legal Services Board, One Kemble Street, London WC2B 4AN

7.2 This Order also provides in article 3 for the Institute to have the same intervention powers when acting as an approved regulator in relation to persons authorised by it as it has when acting as a licensing authority in relation to licensed bodies. This has been done by applying Schedule 14 of the 2007 Act to the Institute in its capacity as an approved regulator with the modifications listed in paragraphs (2) and (3). Although there is a low incidence of fraud historically amongst members, the Institute recognises that there may be a risk to the consumer in cases where firms engage in probate and estate administration and hold client or estate funds. Therefore, in order for the Institute to protect the consumer and the wider public interest, it wishes to hold intervention powers for all firms that it accredits, whether they are authorised or licensed firms.

- ***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 The Institute consulted on these proposals in June 2012 and no major issues of concern were raised.

8.2 There are procedural requirements relating to consultation in sections 69 and 70 of the 2007 Act. The Lord Chancellor may make an order only if the LSB has made a recommendation under section 69, annexing a draft order. Before making the recommendation to the Lord Chancellor, the LSB must publish the proposed recommendation and draft order and have regard to any representations made.

8.3 The LSB therefore consulted on a draft of the order between 21 July and 15 August[2]. No responses were received.

9. Guidance

9.1 No other public guidance or other publicity is necessary in connection with this Order. The changes will affect individuals and firms regulated by the Institute and the Institute will publicise these as necessary.

10. Impact

10.1 There is no impact on charities or voluntary bodies. Any business impact will relate to the Institute.

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[2] The consultation document can be found at http://www.legalservicesboard.org.uk/what_we_do/consultations/open/pdf/2014/20140718_Consultation_s69_ICAEW.pdf or obtained from Consultation Co-ordinator, Legal Services Board, One Kemble Street, London WC2B 4AN

10.2 There is no impact on the public sector.

10.3 An Impact Assessment is attached to this memorandum and will be published alongside the Explanatory Memorandum on www.legislation.gov.uk.

11. Regulating small business

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

12. Monitoring & review

12.1 Under the 2007 Act, the LSB has oversight responsibility for all the approved regulators, including the Institute, and the LSB has a statutory duty to promote the regulatory objectives of the 2007 Act. As part of their ongoing work the LSB will monitor and review the effectiveness of this measure.

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.