EXPLANATORY MEMORANDUM TO

THE LEGAL SERVICES ACT 2007 (APPROVED REGULATOR) ORDER 2020

2020 No. 271

1. Introduction

1.1 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 designates the Institute of Chartered Accountants in England and Wales ("the Institute") as an approved regulator under the Legal Services Act 2007 ("the 2007 Act"), for the reserved legal activity of the administration of oaths. This will enable the Institute to permit properly qualified and trained members to conduct this legal activity, in line with its regulatory arrangements which have been approved by the Legal Services Board (LSB).

3. Matters of special interest to Parliament

Matters of special interest to the Joint Committee on Statutory Instruments

3.1 None.

Matters relevant to Standing Orders Nos. 83P and 83T of the Standing Orders of the House of Commons relating to Public Business (English Votes for English Laws)

3.2 This entire instrument applies to England and Wales only.

3.3 The instrument does not have any minor or consequential effects outside England and Wales.

3.4 In the view of the Department, for the purposes of House of Commons Standing Order 83P the subject-matter of this entire instrument would be within the devolved legislative competence of the Northern Ireland Assembly if equivalent provision in relation to Northern Ireland were included in an Act of the Northern Ireland Assembly as a transferred matter and the Scottish Parliament if equivalent provision in relation to Scotland were included in an Act of the Scottish Parliament.

3.5 The Department has reached this view because it considers that the primary purpose of the instrument relates to the regulation of the legal services profession, which is within the devolved legislative competence of both of the devolved legislatures.

3.6 The primary purpose of the subject matter of the instrument is not within Schedule 5 of the Scotland Act 1998 or within Schedules 2 or 3 of the Northern Ireland Act 1998 (and is not otherwise outside the legislative competence of the Scottish Parliament or Northern Ireland Assembly).

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 set out in Section 3 under "Matters relevant to Standing Orders Nos. 83P and 83T of the Standing Orders of the House of Commons relating to Public Business (English Votes for English Laws)".

5. European Convention on Human Rights

5.1 The Parliamentary Under Secretary of State, Alex Chalk MP, has made the following statement regarding Human Rights: "In my view the provisions of the Legal Services Act 2007 (Approved Regulator) Order 2020 are compatible with the Convention rights."

6. Legislative Context

6.1 The 2007 Act sets out a framework for the regulation of legal services in England and Wales. In doing so, it established the Legal Services Board ("the LSB") as the oversight regulator for this framework.

6.2 Section 12 of the 2007 Act sets out six reserved legal activities which may only be carried on by those persons who are authorised to do so, or who are exempt from the requirement to be authorised. These reserved activities are the exercise of a right of audience, the conduct of litigation, reserved instrument activities, probate activities, notarial activities and the administration of oaths.

6.3 The 2007 Act makes provision for the regulation and authorisation, by approved regulators, of those persons providing reserved legal activities. The approved regulators and the reserved legal activities in relation to which they are designated to regulate are set out in Part 1 of Schedule 4 to the 2007 Act and in designation Orders made under Schedule 4.

6.4 Schedule 4 to the 2007 Act provides for bodies wishing to authorise and regulate persons to carry out a reserved legal activity to apply to the LSB to become an approved regulator for the specified activity or activities. The approval procedure for such applications is set out in Schedule 4.

6.5 This instrument is being made under paragraph 17(1)(a) of Schedule 4 to the 2007 Act whereby, following approval from the LSB, the Lord Chancellor may make an Order designating an approved regulator, in relation to a specified reserved legal activity or activities.

6.6 Schedule 10 to 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 (ABS), which are partly or wholly owned or controlled by non-lawyers to carry out reserved legal activities. Part 5 of the 2007 Act sets out arrangements under which licensing authorities may regulate such bodies.

7. Policy background

What is being done and why?

7.1 The Institute is currently an approved regulator and licensing authority under the 2007 Act for the reserved legal activity of probate activities, and it regulates individuals, entities and ABS providing this service to consumers. The Institute has consulted on expanding its legal services offering by regulating more reserved legal activities, and applied to the LSB for further designation. Following a recommendation from the

LSB, the Lord Chancellor confirmed in May 2019 that he agreed to make Orders to designate the Institute as an approved regulator and licensing authority for the further reserved legal activity of the administration of oaths. This will allow the Institute to regulate individuals, entities and ABS providing this reserved legal activity, as recommended by the LSB.

7.2 This Order will designate the Institute as an approved regulator for the administration of oaths. Subject to the approval of Parliament of this Order, a further Order designating the Institute as a licensing authority for the same reserved legal activity will be made.

7.3 Paragraph 8 of Schedule 2 to the 2007 Act defines the administration of oaths as meaning the exercise of the powers conferred on a commissioner for oaths by –

(a) the Commissioner for Oaths Act 1889;
(b) the Commissioner for Oaths Act 1891;
(c) section 24 of the Stamp Duties Management Act 1891

8. European Union (Withdrawal) Act/Withdrawal of the United Kingdom from the European Union

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

9. Consolidation

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

10. Consultation outcome

10.1 The Institute consulted publicly between January and May 2016 on its intention to apply to the LSB to be designated in respect of further reserved legal activities.[1] It then made its application to the LSB in June 2016.

10.2 In addition, as required by the 2007 Act, the LSB consulted with the Legal Services Consumer Panel, the Competition and Markets Authority and the Lord Chief Justice. The Consumer Panel and the Competition and Markets Authority both responded with their advice on 18 October 2016. The Lord Chief Justice responded with his advice on 1 February 2017[2].

11. Guidance

11.1 The LSB has issued guidance to approved regulators under section 162 of the 2007 Act. A copy of the guidance can be found at https://www.legalservicesboard.org.uk/our-work/lsb-rules-and-guidance.

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[1] https://www.icaew.com/about-icaew/regulation-and-the-public-interest/policy/consultations-and-representations/proposed-icaew-reserved-legal-services-application

[2] Please see all referenced documents on this webpage: https://www.legalservicesboard.org.uk/our-work/statutory-decision-making/designations-applications/closed-designations-applications/icaew-approved-regulator-and-licensing-authority-application

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 instrument as no, or no significant, impact on the private, voluntary or public sector is foreseen.

13. Regulating small business

13.1 The legislation applies to activities that are undertaken by small businesses.

13.2 No specific action is proposed to minimise regulatory burdens on small businesses.

14. Monitoring & review

14.1 The regulation does not include a statutory review clause and, in line with the requirements of the Small Business, Enterprise and Employment Act 2015, Alex Chalk MP, has made the following statement:

14.2 It would not be appropriate to include a statutory review clause in this instrument as the Act under which it is made provides for alternative means of monitoring and review. The LSB has oversight responsibility for all approved regulators and, as part of its ongoing work, will monitor and review the effectiveness of this measure. Under the 2007 Act, the Lord Chancellor may only make an order for an approved regulator to have its designation in relation to one or more reserved legal activities cancelled on the recommendation of the LSB.

15. Contact

15.1 Ruksana Begum at the Ministry of Justice, Telephone: 07719099645 or email: Ruksana.Begum@justice.gov.uk can be contacted with any queries regarding the instrument.

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

15.3 Alex Chalk MP at the Ministry of Justice can confirm that this Explanatory Memorandum meets the required standard.