EXPLANATORY MEMORANDUM TO

THE LEGAL SERVICES ACT 2007 (DESIGNATION AS A LICENSING AUTHORITY) ORDER 2020

2020 No. 293

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 Order designates the Institute of Chartered Accountants in England and Wales ("the Institute") as a licensing authority for the reserved activity of the administration of oaths. This will enable the Institute to license for the purpose of this reserved activity bodies which are partly or wholly owned or controlled by non-lawyers as alternative business structures, providing legal services, or a mixture of legal and non-legal services.

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 As the instrument is subject to negative resolution procedure there are no matters relevant to Standing Orders Nos. 83P and 83T of the Standing Orders of the House of Commons relating to Public Business at this stage.

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 As the instrument is subject to negative resolution procedure and does not amend primary legislation, no statement is required.

6. Legislative Context

6.1 The Legal Services Act 2007 ("the 2007 Act") sets out a framework for the regulation of legal services in England and Wales. The 2007 Act makes provision for the regulation and authorisation, by approved regulators, of those persons providing reserved legal activities.

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 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 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 10 to the 2007 Act provides that an approved regulator may also apply to the LSB to become a licensing authority in relation to one or more reserved legal activity. 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. On a recommendation from the LSB, an approved regulator can be designated by the Lord Chancellor as a licensing authority.

6.5 The Institute is an approved regulator and licensing authority for probate activities[1], and an approved regulator for the administration of oaths.[2]

7. Policy background

What is being done and why?

7.1 This instrument is being made under paragraph 15(1)(a) of Schedule 10 to the 2007 Act whereby, following approval from the LSB, the Lord Chancellor may make an Order designating a licensing authority, in relation to a specified reserved legal activity or activities. It will designate the Institute as a licensing authority, able to licence and regulate alternative business structures under the 2007 Act, for the administration of oaths. An alternative business structure is an entity where one or more of the owners or managers is a non-lawyer. They can attract external finance and management expertise and operate as a 'one-stop' shop, providing a mix of legal and other professional services in innovative ways.

7.2 The 2007 Act sets out eight regulatory objectives which all legal services regulators have a duty to promote. These include protecting and promoting the interests of consumers, improving access to justice, encouraging an independent, strong, diverse and effective legal profession and promoting competition in the provision of legal services. The Government believes that designating the Institute as a licensing authority will assist in ensuring the objectives are met.

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.

[1] SI 2014/1872 and SI 2014/1925
[2] SI 2020/271

9. Consolidation

9.1 This is a stand-alone Order which does not make any amendments to any other statutory instrument, 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 the five further reserved legal activities.[3] 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[4].

11. Guidance

11.1 No guidance is proposed in respect of this Order due to the straightforward nature and effect of this power.

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 because of the minimal impact on business and the public sector.

13. Regulating small business

13.1 The legislation applies to activities that are undertaken by small businesses, as it will enable them to apply to the Institute to be licensed as an alternative business structures, so the only impact is a positive one. The advantages of an alternative business structure include being able to attract external finance and expertise.

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 licensing authorities and, as part of its ongoing work, will monitor and review the effectiveness of this measure. Under

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

[4] 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

the 2007 Act, the Lord Chancellor may by Order cancel an approved regulator's designation as a licensing authority in relation to one or more of the reserved legal activities, 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 Clare Hayes, 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.