EXPLANATORY MEMORANDUM TO

THE LEGAL SERVICES ACT 2007 (LICENSING AUTHORITY) ORDER 2014

2014 No. 1925

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 probate activities. This will allow the Institute to license bodies that are partly or wholly owned by non-lawyers as alternative business structures to carry on those activities.

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

3.1 None.

4. Legislative Context

4.1 The Legal Services Act 2007 ("the 2007 Act") sets out a framework for the regulation of legal services in England and Wales. It established the Legal Services Board (LSB) as the oversight regulator for this framework and requires that reserved legal activities may only be carried out by those who are authorised to do so, or are exempt. It makes provision for the regulation by approved regulators of those carrying on reserved legal activities. A list of approved regulators is set out in Part 1 of Schedule 4 to the 2007 Act and now includes the Institute following its designation as an approved regulator by the Legal Services Act 2007 (Approved Regulator) Order 2014 (SI 2014/1872)[1].

4.2 Under Part 5 of the 2007 Act an approved regulator may be designated as a licensing authority. A licensing authority may license bodies ("licensed bodies") which are partly or wholly owned or controlled by non-lawyers to provide legal services (or a mixture of legal and non-legal services).

4.3 Schedule 10 to the 2007 Act provides for approved regulators to apply to the LSB to become a licensing authority. The Lord Chancellor may only make an Order on the recommendation of the LSB and under paragraph 15 of Schedule 10 must give the applicant notice of, and publish, his decision to make such an Order.

[1] http://www.legislation.gov.uk/id/uksi/2014/1872

5. Territorial Extent and Application

5.1 This instrument applies to England and Wales.

6. European Convention on Human Rights

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

7. Policy background

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

7.1 The Legal Services Act 2007 sets out 8 regulatory objectives, which include protecting and promoting the interests of consumers and promoting competition in the provision of legal services. The Government believes that designating the Institute as a new licensing authority will assist in ensuring these objectives are met. This Order designates the Institute as a licensing authority for probate activities. This will enable it to licence and regulate licensed bodies under the provisions of Part 5 of the 2007 Act. The Lord Chancellor has agreed to make this Order on the recommendation of the LSB. In making its recommendation, the LSB has completed a detailed review of the Institute's application.

7.2 Before a firm can be licensed by the Institute as an alternative business structure, it must demonstrate that it will comply with the Institute's Probate Regulations. These regulations cover arrangements for the conduct, discipline, and practice of all bodies licensed by the Institute. Firms will also be required to demonstrate their compliance with the Institute's Code of Ethics, the Institute's clients' money regulations, the Institute's Professional Indemnity Insurance regulations and anti-money laundering legislation.

7.3 The LSB is satisfied that the Institute's application demonstrated that it has complied with the statutory arrangements set out in Schedules 11 (licensing rules) and 13 (ownership of licensed bodies) to the 2007 Act regarding the arrangements which licensing authorities must make in their licensing rules for the purpose of considering applications and regulating licensed bodies. These arrangements include provision for indemnity and compensation.

7.4 The Institute will have in place memoranda of understanding with the Office for Legal Complaints and other regulators, both legal and non-legal, to ensure that complaints about, or conflicts within, licensed bodies are effectively dealt with. Appeals against the Institute's decisions as a licensing authority will be considered by a Review Committee, and there will in due course be a right of appeal of the decision of the Review Committee to the General Regulatory Chamber of the First-tier Tribunal.

7.5 The LSB considers that the Institute has the capacity and capability to be a competent licensing authority and that consumers will be suitably protected.

- ***Consolidation***

7.6 This is a stand-alone Order which does not make any amendments to any other statutory instrument, 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 to be designated as a licensing authority for 10 weeks (June to September 2012). 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's members and they did not raise any significant issues. The Law Society initially responded stating that they would reserve their comments until after the application has been submitted formally to the LSB. They then later 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. LSB sent a copy of this letter to the Institute, who replied addressing each of the concerns raised.

8.3 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 note that the Institute will authorise any competent provider, not just accountancy firms, although of course 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 the Probate Committee or Disciplinary Committee as this is needed to ensure public confidence and delivers better quality regulation.

8.4 In response to the Panel, the Institute redrafted their Probate Regulations so that the Probate Committee is 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 is not proposing to alter the membership of the Disciplinary Committee at this time, although they will keep this under review.

8.5 During the consultation period, the Institute met with the Chief Ombudsman, who 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.

8.6 Secondly, once the Institute had made its designation application to the LSB, the LSB consulted with the statutory consultees under paragraph 3 of Schedule 10 to the Act: the Office of Fair Trading, the Legal Services Consumer Panel and the Lord Chief Justice. The Office of Fair Trading had no further comments. The Legal Services Consumer Panel was broadly content. The then Lord Chief Justice has a number of concerns that regulatory competition will have a detrimental affect on standards, that a variation in standards between regulators is inappropriate in principle and that a variation in standards may bring about a drive to the bottom. The LSB addressed those concerns by setting out how the 2007 Act aims to achieve a more effective and competitive market to improve standards.

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

9. Guidance

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

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 2007 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. A further full RIA, together with a detailed Equality Impact Assessment, was prepared in relation to S.I. 2011/2196 which commenced Part 5 of the 2007 Act, and this can be found at: http://www.legislation.gov.uk/uksi/2011/2196/introduction/made.

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 licensing authorities 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 for any queries regarding the instrument.