

Section 69 Order to make provisions relating to the functions of the Institute of Chartered Accountants in England and Wales (ICAEW)

Decision document relating to a consultation, under section 70 of the Legal Services Act 2007, on a recommendation and a proposed draft statutory order to the Lord Chancellor, to be made under Section 69 of the Legal Services Act 2007 to make provisions on the functions of ICAEW.

30 September 2014

Contents

Introduction.....	3
Background	3
Outcome of consultation.....	5
Changes to the draft order since consultation	5
The Board's decision	6
Impact assessment	6
Annex A - Recommendation to the Lord Chancellor and draft section 69 order.	7

Introduction

1. From 21 July 2014 to 15 August 2014, the Legal Services Board (**the Board**) conducted a consultation exercise¹ inviting comments on a proposed recommendation and order under section 69 of the Legal Services Act 2007 (**the Act**). The purpose of the order is to modify the functions of the Institute of Chartered Accountants for England and Wales (**ICAEW**) so that its appeal arrangements and intervention powers are consistent with those it has as a licensing authority.
2. The ICAEW is a regulator of, and professional membership body for, the accountancy profession in England and Wales. In December 2013, the Board made recommendations to the Lord Chancellor that he make two orders: one designating ICAEW as an approved regulator for probate activities, and the other designating ICAEW (once it is an approved regulator) as a licensing authority for the same reserved legal activity. These recommendations were accepted by the Lord Chancellor in March 2014 and the order designating ICAEW as an approved regulator came into force on 17 July 2014, followed by the order designating ICAEW as a licensing authority on 14 August 2014.
3. The ability of the ICAEW to have a consistent approach to its appeal arrangements and intervention powers whether acting as an approved regulator or licensing authority, could not be achieved without there being an order made under section 69 of the Act.
4. This paper summarises the results of that consultation and the Board's decision.

Background

5. Section 69 of the Act, allows the Lord Chancellor, on the recommendation of the LSB, to make an order to modify, or make other provision relating to, the functions of an approved regulator or any other body other than the LSB.² This can include modifying provisions made by or under any enactment, instrument or document.³
6. Any order made by the Lord Chancellor under section 69 of the Act must be made by statutory instrument⁴ and this must be through the affirmative

¹ Available from the LSB website at:
http://www.legalservicesboard.org.uk/what_we_do/consultations/open/pdf/2014/20140718_Consultation_s69_ICAEW.pdf

² s69(1) and s69(2) of the Act

³ s69(6) of the Act

⁴ s204(1) of the Act

procedure,⁵ i.e. approved by both the House of Commons and the House of Lords, to become law.

7. Section 70 of the Act sets out the procedural requirements relating to a recommendation under section 69. Section 70(2) requires that before making a recommendation to the Lord Chancellor, the LSB publishes a draft of the proposed recommendation and the proposed draft order.
8. Section 70(1) of the Act requires that the recommendation may only be made under section 69 with the consent of the approved regulator.
9. The consultation invited representations on a proposed draft recommendation and proposed draft order that, if given effect, would make provisions relating to the functions of ICAEW as both an approved regulator and a licensing authority as follows:
 - Allow for the making of rules or regulations providing for appeals to the General Regulatory Chamber (**GRC**) of the First Tier Tribunal (**FTT**) against decisions made by ICAEW in its capacity as an approved regulator (including arrangements providing for a decision on such an appeal to be final and for orders as to payment of costs).
 - Allow for the making of licensing rules providing for appeals to the GRC of the FTT against decisions made by ICAEW in its capacity as a licensing authority (including rules providing for a decision on such an appeal to be final and for orders as to payment of costs).
 - Allow for Schedule 14 to the Act (a licensing authority's powers of intervention) to be modified to have effect in relation to ICAEW in its capacity as an approved regulator.
10. ICAEW's regulatory framework has been based on the premise that all firms – whether ABS or non-ABS – will be subject to the same regulatory arrangements. Therefore, the key outcome of the proposals set out in the section 69 order is to allow for a consistent regulatory regime for the regulation of probate firms by ICAEW in its capacity as both an approved regulator and licensing authority.
11. The proposals will also ensure that consumers of probate services have consistent and equal rights and protections. Furthermore, ICAEW aim to improve the efficiency of its regulatory framework for the delivery of probate services by having the same range of powers when acting as either an approved regulator or a licensing authority.

⁵ s206(4)(h) of the Act

12. Section 70(3) requires that the draft order is accompanied by a notice which states that representations about the proposals may be made to the LSB within a specified period. Representations were invited to be made by 5pm on 15 August 2014.

Outcome of consultation

13. No representations were received on the consultation paper.

Changes to the draft order since consultation

14. After the consultation was completed, and in accordance with its usual process, the Ministry of Justice sought pre-clearance of the order from the Joint Select Committee on Statutory Instruments.

15. As a consequence of that review a number of minor amendments were made to the order as follows:

Article 2 (1)	<i>"...including in its role as a licensing authority."</i> has been added to Article 2, paragraph (1) of 'Power to make regulations or rules providing for appeals to the First tier Tribunal'.
Article 2 (2)	<i>"The regulations or rules made by the Institute may provide for a decision on such an appeal to be final and for orders as to payment of costs)(a)"</i> has been added to Article 2, paragraph (2) of 'Power to make regulations or rules providing for appeals to the First tier Tribunal'. Footnote (a) has also been added to the above amendment: <i>(a) "The Institute of Chartered Accountants in England and Wales ("the Institute") was designated as an approved regulator for probate activities by the Legal Services Act 2007 (Approved Regulator) Order 2014 (S.I. 2014/1872) and as a licensing authority for probate activities by the Legal Services Act 2007 (Licensing Authority) Order 2014 (S.I. 2014/1925). Probate activities are described in paragraph 6(1) of Schedule 2 to the Legal Services Act 2007 ("the 2007 Act")."</i>
Article 3 (1)	<i>"...(other than its role as a licensing authority)..."</i> has been added to Article 3, paragraph (1) of 'Power of intervention'.
Article 3 (2) (b)	Footnote (b) has been added to Article 3, paragraph (2)(b) of 'Power of intervention': <i>(b) "Authorised person" is defined by section 18 of the 2007 Act"</i>
Article 3 (2) (c)	<i>"...or the "relevant licensing authority"</i> has been added to Article 3, paragraph (2)(c) of 'Power of intervention'.

Explanatory note	The singular word “ <i>role</i> ” has been added to the explanatory note to Article 2.

The Board’s decision

16. Having considered the outcome to the consultation and the changes made to the order in the final clearance process, on 29 September 2014 the Board decided that it should proceed with the recommendation to the Lord Chancellor that the order be made.
17. The text of the final recommendation that will be made to the Lord Chancellor and the draft order that will be attached to it are at **Annex A**.

Impact assessment

18. Included in the consultation paper for comment was a draft impact assessment about which no comments were received in the consultation. After the consultation closed, there was further work on the impact assessment in order for it to be submitted to the Ministry of Justice Chief Economist for final approval. The final version approved by the Chief Economist will be published by the Ministry of Justice with the section 69 order that is laid before Parliament.

Annex A - Recommendation to the Lord Chancellor and draft section 69 order

Recommendation by the Legal Services Board to the Lord Chancellor under section 69 of the Legal Services Act 2007

1. On 29 September 2014, the Legal Services Board (**LSB**) decided to make a recommendation to the Lord Chancellor that he makes an order under section 69 of the Legal Services Act 2007 (**the Act**) to make provisions relating to the functions of the Institute of Chartered Accountants in England and Wales (**ICAEW**).
2. In accordance with the requirements of section 70(2) of the Act, the LSB published a draft of the proposed recommendation and draft order on 21 July 2014 and invited representations about the proposals to be made to the LSB by 15 August 2014. No representations were received.
3. In accordance with section 70(1) of the Act, the recommendation is made with the consent of ICAEW.

Chief Executive, Legal Services Board

30 September 2014

DRAFT STATUTORY INSTRUMENTS

2014 No.

LEGAL SERVICES, ENGLAND AND WALES

The Legal Services Act 2007 (The Institute of Chartered Accountants in England and Wales) (Modification of Functions) Order 2014

Made - - - - - *******

Coming into force in accordance with article 1(2)

The Lord Chancellor makes the following Order in exercise of the powers conferred by sections 64(2) and (3), 69(1) and (4) and 204(3) of the Legal Services Act 2007^(a).

In accordance with section 69(2) and (3) of that Act, this Order is made following a recommendation made by the Legal Services Board to which was annexed a draft Order in a form not materially different from this Order.

The Legal Services Board has made the recommendation with the consent required by section 70(1) of that Act and after complying with the requirements in section 70(2) to (5) of that Act.

In accordance with section 206(5) of that Act, a draft of this instrument has been approved by a resolution of each House of Parliament.

Citation, commencement and interpretation

1.—(1) This Order may be cited as the Legal Services Act 2007 (The Institute of Chartered Accountants in England and Wales) (Modification of Functions) Order 2014.

(2) This Order comes into force on the day after the day on which it is made.

(3) In this Order—

“the 2007 Act” means the Legal Services Act 2007; and

“the Institute” means the Institute of Chartered Accountants in England and Wales.

Power to make regulations or rules providing for appeals to the First-tier Tribunal

2.—(1) The Institute may make regulations or rules providing for appeals to the First-tier Tribunal against decisions made by the Institute in its capacity as an approved regulator, including in its role as a licensing authority.

(2) The regulations or rules made by the Institute may provide for a decision on such an appeal to be final and for orders as to payment of costs)(a).

Power of intervention

3.—(1) Schedule 14 to the 2007 Act (licensing authority’s powers of intervention) applies in relation to the Institute in its capacity as an approved regulator (other than its role as a licensing authority) and persons authorised by the Institute as it applies in relation to a licensing authority and licensed bodies, subject to the modifications in paragraphs (2) and (3).

(2) Schedule 14 is to be read as if each reference to—

- (a) a “licence” was a reference to an “authorisation”;
- (b) a “licensed body” was a reference to an “authorised person”(b);
- (c) “a licensing authority” or the “relevant licensing authority” was a reference to “the Institute”; and
- (d) a “manager” was a reference to a “principal”.

(3) Paragraph 1(3) of Schedule 14 is to be read as if after sub-paragraph (e) there were inserted—

- “(f) the authorised person is the subject of a bankruptcy order under Part IX of the Insolvency Act 1986(c) (bankruptcy);
- (g) the authorised person is established outside England and Wales and is subject to an event in their country of establishment analogous to an event set out in paragraphs (a) to (f) above.”

(4) In this article, “principal” includes—

- (a) an individual in sole practice;
- (b) a person who is a partner;
- (c) a member of a limited liability partnership;
- (d) a director;
- (e) a member of a governing body, or
- (f) an individual or person who is held out as being a director, partner, member of a limited liability partnership, or member of a governing body.

Signatory text

Address
Date

Name
Parliamentary Under Secretary of State
Department

(a) The Institute of Chartered Accountants in England and Wales (“the Institute”) was designated as an approved regulator for probate activities by the Legal Services Act 2007 (Approved Regulator) Order 2014 (S.I. 2014/1872) and as a licensing authority for probate activities by the Legal Services Act 2007 (Licensing Authority) Order 2014 (S.I. 2014/1925). Probate activities are described in paragraph 6(1) of Schedule 2 to the Legal Services Act 2007 (“the 2007 Act”).

(b) “Authorised person” is defined by section 18 of the 2007 Act.

(c) 1986 c. 45.

EXPLANATORY NOTE

(This note is not part of the Order)

This Order is made under section 69 of the Legal Services Act 2007 (c. 29) (“the 2007 Act”). It modifies the functions of the Institute of Chartered Accountants in England and Wales (“the Institute”).

Article 2 allows the Institute to make rules or regulations providing for appeals to the First-tier Tribunal against decisions made by the Institute in its role as an approved regulator, including in its capacity as a licensing authority.

Article 3 provides 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 under Schedule 14 to the 2007 Act, with the modifications listed in paragraphs (2) and (3).

An impact assessment has been prepared for this instrument and can be found at www.legislation.gov.uk or obtained from the Head of Legal Services Policy, Law and Access to Justice Group, Ministry of Justice, 102 Petty France, London SW1H 9AJ.