

<b>To:</b>	Legal Services Board	
<b>Date of Meeting:</b>	15 October 2013	<b>Item:</b> Paper (13) 67

<b>Title:</b>	Designation applications: related statutory instruments	
<b>Workstream(s):</b>	Statutory Decisions	
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<b>Status:</b>	Unclassified	

<b>Summary:</b>
<p>This paper summarises the range of statutory instruments that will be need if designation applications currently being considered are approved and recommendations made to the Lord Chancellor in respect of IPS IPREG and ICAEW (two applications).</p> <p>It also comments on the timetable that the Ministry of Justice has prepared for these orders and our proposed approach to the consultation process.</p>

<b>Recommendation(s):</b>
<p>The Board is invited:</p> <ul style="list-style-type: none"> <li>to note the contents of the paper</li> <li>delegate to the Chief Executive final sign off of the consultation papers in relation to orders under s69 or s80 of the Act in respect of IPS (two applications), IPREG and ICAEW (two applications).</li> </ul>

<b>Risks and mitigations</b>	
<b>Financial:</b>	None.
<b>Legal:</b>	None
<b>Reputational:</b>	None
<b>Resource:</b>	None

Consultation	Yes	No	Who / why?
<b>Board Members:</b>		√	
<b>Consumer Panel:</b>		√	
<b>Others:</b>	None		

<b>Freedom of Information Act 2000 (Fol)</b>		
Para ref	Fol exemption and summary	Expires
None		

## LEGAL SERVICES BOARD

<b>To:</b>	Board		
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### Designation applications: related statutory instruments

#### Background / context

1. The Legal Services Board (LSB) is currently considering four applications (from three applicants) seeking recommendations to the Lord Chancellor for designation as an approved regulator, a licensing authority or both. These applications are each nearing conclusion and we are planning on bringing recommendations to the Board on each in November.
2. Where an application is granted and a recommendation made, it will be necessary for that applicant to have certain powers. This is achieved by an order under either section 69 or section 80 of the Legal Services Act 2007 (the Act). LSB is required to consult on the content of any such order<sup>1</sup>.
3. The Act does not allow for these powers to be granted automatically on designation nor is it possible to have an “general” order in anticipation of future orders. Each application has to be considered individually which adds an extra layer of cost and complexity to each application. The Board referred to this complexity in its recent submission to the Secretary of State for Justice.
4. This paper summarises the orders that will be needed for each application if granted and sets out our proposed approach to consultation.
5. The orders are “technical” in nature rather than policy forming. Other orders which have more policy content (e.g. any order arising from the review of the levy) will be brought to the Board for approval in the usual way.

#### The orders

6. **Annex A** summarises the orders that would be needed and why for each application.
7. Section 69 orders are the mechanism in the Act through which the functions of approved regulators are modified. Each of the current applications requires a section 69 order so that the applicant has ability to carry out its regulatory functions.
8. For each licensing authority, an order is required under Section 80 to establish a body (the General Regulatory Chamber of the First Tier Tribunal) to hear and determine appeals from decisions of the licensing authority.

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<sup>1</sup> Legal Services Act 2007, Sections 70 and 81

## **Current status**

9. Each of the required orders has been drafted and is subject to ongoing review and discussion with the applicants and the Ministry of Justice. In the timetable produced by MOJ, it is expected that the drafting will be largely complete and agreed by the end of October following which the MOJ review processes will commence.
10. The orders have to be in place before the designation orders can be laid. The timetable prepared by MOJ is cautious and, if this is the timetable that is actually met, would mean that designations may not happen until the autumn of 2014; this is significantly later than we and the applicants had expected.
11. We will be working closely with MOJ colleagues and the applicants to reduce this timescale wherever possible while also mitigating the risk of something not being done correctly due to haste.

## **LSB consultation**

12. A key part of this process over which we have a greater degree of control is the consultation process.
13. Sections 70 and 81 of the Act require that we publish both proposed recommendations and proposed orders, giving a specified period in which representations can be made in the proposals.
14. While to some degree complex, the consultation on the proposed orders is about the technical drafting of the order rather than about policy issues; each of the applicants has covered the policy thinking behind the proposals in their own consultations on the applications. Our assessment of the appropriateness of their proposed regulatory arrangements will be dealt with via the Board's assessment of each application.
15. Given the technical nature of the consultation, we propose a consultation period of four to six weeks which is in line with current guidance. Previous consultations on these issues have not garnered significant comment in most cases.
16. While our preference is to issue a single consultation on each type of order, as each is at a different place in its drafting, it may be necessary to issue individual ones so that timetable is not exacerbated by the "slowest".
17. The MOJ timetable anticipates that LSB consultation will commence after the draft of the order has been cleared by the Joint Committee on Statutory Instruments (JCSI). We are exploring whether there is scope for the consultation to be run simultaneously with the JCSI review though this has the risk that the post consultation version is amended in the JCSI review and a second consultation is required.

## **Recommendations**

18. The Board is invited:
  - to note the contents of the paper

- delegate to the Chief Executive final sign off of the consultation papers in relation to orders under s69 or s80 of the Act in respect of IPS (two applications), IPREG and ICAEW (two applications).

02.10.13

## Summary of applications and the related orders

## Annex A

Applicant	Recommendation sought	Related orders
Institute of Chartered Accountants in England and Wales	Designation as an approved regulator and licensing authority for probate activities	<p><i>Section 69</i></p> <p>To give ICAEW intervention powers when acting as an AR</p> <p>To allow ICAEW to make licensing rules (LA) and regulatory arrangements (AR) for sending appeals against decisions made by it to the General Regulatory Chamber (GRC) of the First Tier Tribunal (FTT)</p> <p>To allow the FTT to hear and determine appeals against decisions made by the ICAEW when acting as an AR</p> <p><i>Section 80</i></p> <p>To establish GRC as the appellate body for licensing authority decisions</p>
Chartered Institute of Legal Executives/ILEX Professional Standards Limited	Designation as an approved regulator for probate and reserved instrument activities	<p><i>Section 69</i></p> <p>To require regulated persons to make a contribution to a compensation fund</p> <p>To allow CILEx to pay claims from a compensation fund</p> <p>To give IPS intervention powers</p>
Chartered Institute of Patent Attorneys/Institute of Trade Mark Attorneys/Intellectual Property Regulation Board	Designation as a licensing authority for the exercise of rights of audience, the conduct of litigation, reserved instrument activities and the	<p><i>Section 69</i></p> <p>To establish and maintain compensation arrangements, including the ability to require</p>

	<p>administration of oaths</p>	<p>regulated persons to contribute to the costs of those arrangements</p> <p>To allow IPReg to recover the costs of investigations</p> <p>To give IPReg certain statutory powers not expressly provided for in the founding statutes of CIPA and ITMA (impose fines, requiring appointment of a Head of Legal Practice and Head of Finance and Administration, power to disqualify registrants, power to intervene and recover the costs of such interventions, power to give and publish details of actions against both ABS and registrants, including warnings and reprimands)</p> <p><i>Section 80</i></p> <p>To establish GRC as the appellate body for licensing authority decisions</p>
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