Draft Order laid before Parliament under section 206(5) of the Legal Services Act 2007, for approval by resolution of each House of Parliament.

DRAFT STATUTORY INSTRUMENTS

2014 No.

LEGAL SERVICES, ENGLAND AND WALES

The Legal Services Act 2007 (the Chartered Institute of Patent Attorneys and the Institute of Trade Mark Attorneys) (Modification of Functions) Order 2014

Made - - - - ***

Coming into force in accordance with article 2

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The Lord Chancellor makes the following Order in exercise of the powers conferred by section 64(2), section 69(1), (4) and (6), and section 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(**b**) 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 (4) of that Act.

In accordance with section 206(5) of that Act, a draft of this instrument was laid before Parliament and approved by a resolution of each House of Parliament.

(**a**) 2007 c.29 .
(**b**) The Legal Services Board was established by section 2 of the Legal Services Act 2007.

PART 1

General

Citation and interpretation

1.—(1) This Order may be cited as the Legal Services Act 2007 (the Chartered Institute of Patent Attorneys and the Institute of Trade Mark Attorneys) (Modification of Functions) Order 2014.

(2) In this Order—

"the 1988 Act" means the Copyright, Designs and Patents Act 1988(**a**);

"the 1994 Act" means the Trade Marks Act 1994(**b**);

"the 2007 Act" means the Legal Services Act 2007;

"CIPA" means the Chartered Institute of Patent Attorneys;

"CIPA-registered body" means a body (corporate or unincorporate) which is entered on the register kept by CIPA under section 275 of the 1988 Act and in relation to which CIPA is a relevant approved regulator within the meaning of section 20(4) of the 2007 Act;

"ITMA" means the Institute of Trade Mark Attorneys;

"ITMA-registered body" means a body (corporate or unincorporate) which is entered on the register kept by ITMA under section 83 of the 1994 Act and in relation to which ITMA is a relevant approved regulator within the meaning of section 20(4) of the 2007 Act.

Commencement

2.—(1) Except as provided by paragraphs (2) to (4), this Order comes into force on the day after the day on which it is made.

(2) Articles 6 to 8 and paragraph 10 of Schedule 2—

(a) do not come into force unless a relevant designation order is made in relation to CIPA; and

(b) where such an order is made, come into force at the same time as that order.

(3) Articles 13 to 15 and paragraph 10 of Schedule 4—

(a) do not have effect unless a relevant designation order is made in relation to ITMA; and

(b) where such an order is made, come into force at the same time as that order.

(4) Paragraph 11(1)(b) and (c) of Schedule 2 and paragraph 11(1)(b) and (c) of Schedule 4 ("the relevant provisions") do not have effect unless each of CIPA and ITMA is designated by a relevant designation order in relation to at least one activity which is the same reserved legal activity and—

(a) if each is designated by the same order in relation to that activity, the relevant provisions come into force at the same time as that order; and

(b) if each is designated by a separate order in relation to that activity, the relevant provisions come into force at the same time as whichever is the later of those orders.

(5) In paragraphs (2) to (4), any reference to a relevant designation order, in relation to CIPA or ITMA, is to an order designating CIPA or ITMA (as the case be) as a licensing authority under Part 1 of Schedule 10 to the 2007 Act in relation to one or more reserved legal activities.

(**a**) 1988 c.48.
(**b**) 1994 c.26.

PART 2

Functions of CIPA

CIPA acting as an approved regulator

Interpretation

3. In articles 4 and 5 references to CIPA are to CIPA acting in its capacity as an approved regulator (other than in its role, if any, as a licensing authority).

Management and control of CIPA-registered bodies

4.—(1) CIPA may make regulations under section 275A(2)(b) of the 1988 Act(**a**) (requirements as to registration of a body corporate or unincorporate and its management and control) which require each CIPA-registered body to have—

(a) a Head of Legal Practice;

(b) a Head of Finance and Administration.

(2) Regulations made by virtue of paragraph (1) must include the provisions specified in Schedule 1.

Appeals to the First-tier Tribunal and the High Court

5.—(1) CIPA may make regulations under section 275A(2)(i) of the 1988 Act which provide for appeals against decisions made by CIPA under regulations made under section 275A of the 1988 Act (including regulations providing for a decision on such an appeal to be final and for orders as to payment of costs) to be made to the First-tier Tribunal or the High Court.

(2) Regulations made by virtue of paragraph (1) may include provision for appeals against decisions made by CIPA under this Order.

CIPA acting as a licensing authority

Interpretation

6. In articles 7 and 8—

(a) references to CIPA are to CIPA acting in its role as a licensing authority; and

(b) references to a licensed body are to a licensed body in relation to which CIPA is a relevant licensing authority within the meaning of Part 5 of the 2007 Act(**b**).

Power to require payment of investigation costs

7.—(1) In this article—

"disciplinary measure", in relation to a relevant person, includes an arrangement where—

(a) the relevant person gives to CIPA an undertaking to do or not to do (or to cease doing) anything specified in the undertaking; and

(b) any breach of that undertaking is liable to result in the imposition by CIPA of one or more other disciplinary measures on that relevant person;

"relevant person" means—

(a) a licensed body; or

(**a**) Section 275A was inserted by section 185(3) of the Legal Services Act 2007.
(**b**) "Relevant licensing authority" is defined in section 73(4) of the Legal Services Act 2007.

(b) any manager or employee of a licensed body.

(2) Where—

(a) CIPA imposes a disciplinary measure on a relevant person, and

(b) the measure is imposed following an investigation conducted by CIPA,

CIPA may, in accordance with licensing rules, also require that relevant person to pay an amount to CIPA in respect of the whole or any part of the costs incurred by CIPA in conducting the investigation.

(3) For the purpose of giving effect to paragraph (2), CIPA must make licensing rules which make provision—

(a) as to the criteria and procedure to be applied by CIPA in determining—

(i) whether to require a relevant person to make a payment under paragraph (2); and

(ii) the amount of any such payment;

(b) as to arrangements for payment, including the time within which the payment is to be made; and

(c) for appeals to be made to the First-tier Tribunal or the High Court against any decision made by CIPA under this article.

(4) If the whole or part of any payment required under paragraph (2) is unpaid at the time by which it is required to be paid, CIPA may recover the unpaid balance as a debt due to it from the relevant person.

Power to issue a notice, warning or reprimand

8.—(1) CIPA may issue a notice, warning or reprimand in respect of any breach of the terms of a licensed body's licence and cause this to be noted against any record (public or private) of that licence.

(2) CIPA may, if it considers it appropriate to do so in any particular case, communicate to the public that it has issued a notice, warning or reprimand to a licensed body under paragraph (1).

(3) For the purpose of giving effect to paragraph (1), CIPA must make licensing rules which specify—

(a) the breaches of the terms of a licensed body's licence in respect of which CIPA may issue a notice, warning or reprimand under paragraph (1);

(b) the criteria and procedure to be applied by CIPA in determining whether to issue any such notice, warning or reprimand;

(c) the form that any such notice, warning or reprimand may take and the procedure by which it may be issued; and

(d) the criteria and procedure to be applied by CIPA in determining whether it is appropriate to communicate any such notice, warning or reprimand to the public.

Powers to make further provision

Powers to make further regulatory arrangements

9.—(1) Schedule 2 contains further provision about regulatory arrangements in relation to —

(a) registered persons and regulated persons, and

(b) licensed bodies (see paragraphs 10 and 11(1)(b) and (c)).

(2) The powers conferred on CIPA by this Order are not to be taken to prejudice—

(a) any other power which CIPA may have to make rules or regulations (however they may be described and whether they are made under an enactment or otherwise), or

(b) any other rules or regulations made by CIPA under any such power(**a**).

PART 3

Functions of ITMA

ITMA acting as an approved regulator

Interpretation

10. In articles 11 and 12 references to ITMA are to ITMA acting in its capacity as an approved regulator (other than in its role, if any, as a licensing authority).

Management and control of ITMA-registered bodies

11.—(1) ITMA may make regulations under section 83A(2)(b) of the 1994 Act(**b**) (requirements as to registration of a body corporate or unincorporate and its management and control) which require each ITMA-registered body to have—

(a) a Head of Legal Practice;

(b) a Head of Finance and Administration.

(2) Regulations made by virtue of paragraph (1) must include the provisions specified in Schedule 3.

Appeals to the First-tier Tribunal and the High Court

12.—(1) ITMA may make regulations under section 83A(2)(i) of the 1994 Act which provide for appeals against decisions made by ITMA under regulations made under section 83A of the 1994 Act (including regulations providing for a decision on such an appeal to be final and for orders as to payment of costs) to be made to the First-tier Tribunal or the High Court.

(2) Regulations made by virtue of paragraph (1) may include provision for appeals against decisions made by ITMA under this Order.

ITMA acting as a licensing authority

Interpretation

13. In articles 14 and 15—

(a) references to ITMA are to ITMA acting in its role as a licensing authority; and

(b) references to a licensed body are to a licensed body in relation to which ITMA is a relevant licensing authority within the meaning of Part 5 of the 2007 Act(**c**).

Power to require payment of investigation costs

14.—(1) In this article—

(**a**) Powers are conferred by Part 5 of the Copyright, Designs and Patents Act 1988 ("the 1988 Act") which are for the time being exercisable by the Chartered Institute of Patent Attorneys ("CIPA"). Section 275(3) of the 1988 Act provides that the register of patent attorneys under section 275 is to be kept by CIPA and section 275A specifies functions which are exercisable by the person who keeps the register. Section 275(4) confers power on the Secretary of State to make an order requiring a person other than CIPA to keep the register. No order has been made at the date on which this Order comes into force. Section 275 of the 1988 Act was substituted by section 185(3) of the Legal Services Act 2007.

(**b**) Section 83A was inserted by section 184(3) of the Legal Services Act 2007.

(**c**) "Relevant licensing authority" is defined in section 73(4) of the Legal Services Act 2007.

"disciplinary measure", in relation to a relevant person, includes an arrangement where—

(a) the relevant person gives to ITMA an undertaking to do or not to do (or to cease doing) anything specified in the undertaking; and

(b) any breach of that undertaking is liable to result in the imposition by ITMA of one or more other disciplinary measures on that relevant person;

"relevant person" means—

(a) a licensed body; or

(b) any manager or employee of a licensed body.

(2) Where—

(a) ITMA imposes a disciplinary measure on a relevant person, and

(b) the measure is imposed following an investigation conducted by ITMA,

ITMA may, in accordance with licensing rules, also require that relevant person to pay an amount to ITMA in respect of the whole or any part of the costs incurred by ITMA in conducting the investigation.

(3) For the purpose of giving effect to paragraph (2), ITMA must make licensing rules which make provision—

(a) as to the criteria and procedure to be applied by ITMA in determining—

(i) whether to require a relevant person to make a payment under paragraph (2); and

(ii) the amount of any such payment;

(b) as to arrangements for payment, including the time within which the payment is to be made; and

(c) for appeals to be made to the First-tier Tribunal or the High Court against any decision made by ITMA under this article.

(4) If the whole or part of any payment required under paragraph (2) is unpaid at the time by which it is required to be paid, ITMA may recover the unpaid balance as a debt due to it from the relevant person.

Power to issue a notice, warning or reprimand

15.—(1) ITMA may issue a notice, warning or reprimand in respect of any breach of the terms of a licensed body's licence and cause this to be noted against any record (public or private) of that licence.

(2) ITMA may, if it considers it appropriate to do so in any particular case, communicate to the public that it has issued a notice, warning or reprimand to a licensed body under paragraph (1).

(3) For the purpose of giving effect to paragraph (1), ITMA must make licensing rules which specify—

(a) the breaches of the terms of a licensed body's licence in respect of which ITMA may issue a notice, warning or reprimand under paragraph (1);

(b) the criteria and procedure to be applied by ITMA in determining whether to issue any such notice, warning or reprimand;

(c) the form that any such notice, warning or reprimand may take and the procedure by which it may be issued; and

(d) the criteria and procedure to be applied by ITMA in determining whether it is appropriate to communicate any such notice, warning or reprimand to the public.

Powers to make further regulatory arrangements

16.—(1) Schedule 4 contains further provision about regulatory arrangements in relation to —

(a) registered persons and regulated persons, and

(b) licensed bodies (see paragraphs 10 and 11(1)(b) and (c)).

(2) The powers conferred on ITMA by this Order are not to be taken to prejudice—

(a) any other power which ITMA may have to make rules or regulations (however they may be described and whether they are made under an enactment or otherwise), or

(b) any other rules or regulations made by ITMA under any such power(**a**).

Signed by authority of the Lord Chancellor

Name
Parliamentary Under Secretary of State
Ministry of Justice

Date

SCHEDULES

SCHEDULE 1

Article 4(2)

CIPA-registered bodies: Head of Legal Practice and Head of Finance and Administration

Head of Legal Practice

1. Paragraphs 2 and 3 apply to regulations made by CIPA by virtue of article 4(1)(a) which require each CIPA-registered body to have a Head of Legal Practice.

2.—(1) The regulations referred to in paragraph 1 must include the requirements in sub-paragraphs (2) to (11) and paragraph 3.

(2) Subject to sub-paragraph (3), a CIPA-registered body must at all times have an individual—

(a) who is designated as Head of Legal Practice; and

(b) whose designation is approved by CIPA.

(3) The requirement in sub-paragraph (2) may be suspended until such time and subject to such conditions as may be specified by CIPA.

(4) A designation of an individual as Head of Legal Practice has effect only while the individual—

(a) consents to the designation;

(b) is an authorised person in relation to one or more of the reserved legal activities which the CIPA-registered body is authorised by CIPA to carry on; and

(c) is not disqualified from acting as Head of Legal Practice by virtue of a disqualification under a provision specified in sub-paragraph (5).

(5) The specified provisions are—

(a) paragraph 3 of Schedule 2 (disqualification by CIPA);

(b) paragraph 3 of Schedule 4 (disqualification by ITMA); and

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(**a**) Powers are conferred by sections 83 to 88 of the Trademarks Act 1994 ("the 1994 Act") which are for the time being exercisable by the Institute of Trade Mark Attorneys ("ITMA"). Section 83(3) of the 1994 Act provides that the register of trade mark attorneys under section 83 is to be kept by ITMA and section 83A specifies functions which are exercisable by the person who keeps the register. Section 83(4) confers power on the Secretary of State to make an order requiring a person other than ITMA to keep the register. No order has been made at the date on which this Order comes into force. Section 83 of the 1994 Act was substituted by section 184(3) of the Legal Services Act 2007.

(c) section 99 of the 2007 Act (disqualification by a licensing authority).

(6) CIPA may approve an individual's designation as Head of Legal Practice of a CIPA-registered body in the course of determining an application for registration of the body made pursuant to regulations made under section 275A of the 1988 Act.

(7) CIPA may approve an individual's designation as Head of Legal Practice of a CIPA-registered body only if it is satisfied that the individual is a fit and proper person to carry out the duties set out in sub-paragraphs (9) and (11) in relation to that CIPA-registered body.

(8) CIPA may withdraw its approval of an individual's designation as the Head of Legal Practice of a CIPA-registered body if it is satisfied that that individual has breached one or more of the duties set out in sub-paragraphs (9) or (11) in relation to that CIPA-registered body.

(9) The Head of Legal Practice of a CIPA-registered body must—

(a) take all reasonable steps to ensure compliance with the requirements of patent attorney regulations, and regulations made by CIPA under this Order, which apply to that CIPA-registered body; and

(b) as soon as reasonably practicable, report to CIPA any failure to comply with such a requirement.

(10) Sub-paragraph (9) does not apply to any requirement imposed by virtue of regulations made under—

(a) section 275A(2)(h) of the 1988 Act (records and accounts), or

(b) paragraph 13 of Schedule 2 (treatment of money).

(11) The Head of Legal Practice of a CIPA-registered body must—

(a) take all reasonable steps to ensure that that CIPA-registered body and any of its managers or employees who are regulated persons, comply with the duties imposed by section 176 of the 2007 Act (duties of regulated persons); and

(b) as soon as reasonably practicable, report to CIPA such failures by those persons to comply with those duties as may be specified in regulations made under this paragraph.

3. The regulations referred to in paragraph 1 must make provision—

(a) about the procedures and criteria to be applied by CIPA in determining for the purposes of regulations under paragraph 2(7) whether an individual is a fit and proper person to carry out the duties set out in paragraphs 2(9) and (11);

(b) for a review by CIPA of a determination that an individual is not a fit and proper person to carry out those duties;

(c) about the procedures and criteria to be applied by CIPA in determining whether to withdraw its approval of an individual's designation as a Head of Legal Practice;

(d) for a review by CIPA of a determination to withdraw its approval of such a designation; and

(e) about the procedures which are to apply where a CIPA-registered body ceases to comply with the requirement to have a designated Head of Legal Practice.

Head of Finance and Administration

4. Paragraphs 5 and 6 apply to regulations made by CIPA by virtue of article 4(1)(b) which require each CIPA-registered body to have a Head of Finance and Administration.

5.—(1) The regulations referred to in paragraph 4 must include the following requirements.

(2) Subject to sub-paragraph (3), a CIPA-registered body must at all times have an individual—

(a) who is designated as Head of Finance and Administration; and

(b) whose designation is approved by CIPA.

(3) The requirement in sub-paragraph (2) may be suspended until such time and subject to such conditions as may be specified by CIPA.

(4) A designation of an individual as Head of Finance and Administration has effect only while the individual—

(a) consents to the designation; and

(b) is not disqualified from acting as Head of Finance and Administration by virtue of a disqualification under a provision specified in paragraph 2(5).

(5) CIPA may approve an individual's designation as Head of Finance and Administration of a CIPA-registered body in the course of determining an application for registration of that body made pursuant to regulations made under section 275A of the 1988 Act.

(6) CIPA may approve an individual's designation as Head of Finance and Administration of a CIPA-registered body only if it is satisfied that the individual is a fit and proper person to carry out the duties set out in sub-paragraph (8) in relation to that CIPA-registered body.

(7) CIPA may withdraw its approval of an individual's designation as the Head of Finance and Administration of a CIPA-registered body if it is satisfied that the individual has breached one or more of the duties set out in sub-paragraph (8) in relation to that CIPA-registered body.

(8) The Head of Finance and Administration of a CIPA-registered body must—

(a) take all reasonable steps to ensure compliance with regulations made under—

(i) section 275A(2)(h) of the 1988 Act (records and accounts), or

(ii) paragraph 13 of Schedule 2 (treatment of money); and

(b) report any breach of those regulations by that body to CIPA as soon as reasonably practicable.

6.—(1) The regulations referred to in paragraph 4 must make provision—

(a) about the procedures and criteria to be applied by CIPA in determining for the purposes of regulations under paragraph 5(6) whether an individual is a fit and proper person to carry out the duties set out in paragraph 5(8);

(b) for a review by CIPA of a determination that an individual is not a fit and proper person to carry out those duties;

(c) about the procedures and criteria to be applied by CIPA in determining in accordance with regulations made under paragraph 5(8) whether to withdraw its approval of an individual's designation;

(d) for a review by CIPA of a determination to withdraw its approval of such a designation; and

(e) about the procedures which are to apply where a CIPA-registered body ceases to comply with the requirement to have a designated Head of Finance and Administration.

SCHEDULE 2

Article 9(1)

CIPA as an approved regulator: regulatory arrangements

Part 1

Disciplinary arrangements

Disciplinary arrangements: financial penalties

1.—(1) In the circumstances specified in regulations made under sub-paragraph (4), CIPA may impose on a registered person or a regulated person a in accordance with those regulations a penalty which is of such amount as CIPA considers appropriate.

(2) The amount of any penalty imposed under sub-paragraph (1) must not exceed—

(a) in the case of a penalty imposed on a registered person who is an individual, £5 million;

(b) in the case of a penalty imposed on a regulated person, £5 million;

(c) in the case of a penalty imposed on a CIPA-registered body, £25 million.

(3) A penalty under sub-paragraph (1) is payable to CIPA.

(4) For the purpose of giving effect to sub-paragraph (1), CIPA must make regulations as to—

(a) the acts and omissions in respect of which CIPA may impose penalties under sub-paragraph (1);

(b) the criteria and procedure to be applied by CIPA in determining whether to impose a penalty and the amount of any penalty; and

(c) arrangements for payment, including the time within which any penalty is to be paid.

2.—(1) If the whole or any part of a penalty under paragraph 1 is not paid by the time by which, in accordance with regulations made under that paragraph, it is required to be paid, the unpaid balance from time to time carries interest at the rate for the time being specified in section 17 of the Judgments Act 1838(**a**) (judgment debts to carry interest).

(2) If the whole or any part of a penalty under paragraph 1 or any portion of it, is unpaid at the time by which, in accordance with regulations made under that paragraph, it is required to be paid, and—

(a) no appeal relating to the penalty has been made in accordance with regulations made under section 275A(2)(i) of the 1988 Act during the period within which such an appeal can be made; or

(b) an appeal has been made under any such provision and has been determined or withdrawn,

CIPA may recover the unpaid balance and any interest which is outstanding as a debt due to CIPA from the person on whom the penalty was imposed.

(3) CIPA must pay into the Consolidated Fund any sum received by it as a penalty under paragraph 1 or as interest on such a penalty under this paragraph.

Disciplinary arrangements: disqualification

3.—(1) CIPA may, in accordance with regulations made under sub-paragraph (6), make an order disqualifying a person from one or more of the activities mentioned in sub-paragraph (2) if—

(a) the disqualification condition is satisfied in relation to that person; and

(b) CIPA is satisfied that it is undesirable for that person to engage in that activity or those activities.

(2) The activities are—

(a) acting as Head of Legal Practice of any CIPA-registered body;

(b) acting as Head of Finance and Administration of any CIPA-registered body;

(c) being a manager of any CIPA-registered body; and

(d) being employed by any registered person.

(3) The disqualification condition is satisfied in relation to a person, if that person (intentionally or through neglect)—

(a) breaches a relevant duty to which that person is subject;

(b) causes, or substantially contributes to, a significant breach by the CIPA-registered body by which that person is employed of the requirements of patent attorney regulations or regulations made by CIPA by virtue of this Order; or

(c) causes, or substantially contributes to, a significant breach by the regulated person by whom that person is employed.

(**a**) 1838 c.110 (1 & 2 Vict). Section 17 was amended by the Statute Law Revision (No 2) Act 1888 c57, the Civil Procedure Acts Repeal Act 1879 c.59 and by SI 1993/564 and SI 1998/2940.

(4) The relevant duties are—

(a) the duties imposed on a Head of Legal Practice by virtue of paragraph 2(9) or (11) of Schedule 1;

(b) the duties imposed on a Head of Finance and Administration by virtue of paragraph 5(8) of Schedule 1; and

(c) the duties imposed by section 176(1) of the 2007 Act on registered persons and regulated persons.

(5) CIPA must keep a list of all persons disqualified under this paragraph.

(6) For the purpose of giving effect to sub-paragraph (1), CIPA must make regulations as to the criteria and procedure to be applied by CIPA in determining whether a person should be disqualified under this paragraph.

(7) Regulations made under sub-paragraph (6) must make provision—

(a) for a review by CIPA of a determination by CIPA that a person should be disqualified;

(b) as to the criteria and procedure to be applied by CIPA in determining whether a person's disqualification should cease to be in force; and

(c) requiring CIPA to notify the Board of any determination by CIPA that a person should be disqualified, of the results of a review of that determination and of any decision by CIPA that a person's disqualification should cease to be in force.

Disqualified employees

4. CIPA may make regulations which provide that a CIPA-registered body may not employ a person who, by virtue of a disqualification under a provision specified in paragraph 2(5) of Schedule 1, is disqualified from being a manager or employee of—

(a) a registered person, as defined in paragraph 14 of this Schedule;

(b) a registered person, as defined in paragraph 14 of Schedule 4; or

(c) a licensed body.

Power to require registered persons to provide information and documents

5.—(1) CIPA may make regulations which provide that CIPA may by notice require a registered person to—

(a) provide information, or information of a description, specified in the notice, or

(b) produce documents, or documents of a description, specified in the notice,

for the purpose of enabling CIPA to ascertain whether the requirements of patent attorney regulations or regulations made by CIPA under this Order are being, or have been, complied with.

(2) Regulations made by CIPA for the purposes of sub-paragraph (1) must make the provision in sub-paragraphs (3) to (6).

(3) A notice given to a person by virtue of sub-paragraph (1)—

(a) may specify the manner and form in which information is to be provided or documents are to be produced;

(b) must specify the period within which information is to be provided or documents are to be produced;

(c) may require the information to be provided, or the document to be produced, to CIPA or to a person specified in the notice.

(4) CIPA may pay to any registered person (or a representative of a registered person) such reasonable costs as may be incurred by that person in complying with a notice referred to under sub-paragraph (1).

(5) CIPA or a person specified in a notice by virtue of regulations made under sub-paragraph (3)(c) may take copies of or extracts from a document produced pursuant to that notice.

(6) Where a registered person (or a representative of a registered person) refuses or otherwise fails to comply with a notice given to that person under sub-paragraph (1), that person must give CIPA a notice to that effect stating the reason why that person does not comply.

6. Where a registered person refuses or otherwise fails to comply with a notice given to the person under paragraph 5(1), CIPA may apply to the High Court for an order requiring the person to comply with the notice or with such directions for the like purpose as may be contained in the order.

Power to require payment of investigation costs

7.—(1) In this paragraph—

"disciplinary measure", in relation to a relevant person, includes an arrangement where—

(a) the relevant person gives to CIPA an undertaking to do or not to do (or to cease doing) anything specified in the undertaking; and

(b) any breach of that undertaking is liable to result in the imposition by CIPA of one or more other disciplinary measures on that relevant person by virtue of paragraph 8;

"relevant person" means a registered person or a regulated person.

(2) Where—

(a) CIPA imposes a disciplinary measure on a relevant person in respect of any act or omission by that person or for which that person is responsible, and

(b) the measure is imposed following an investigation conducted by CIPA,

CIPA may, in accordance with regulations made under sub-paragraph (3), also require that relevant person to pay an amount to CIPA in respect of the whole or any part of the costs incurred by CIPA in conducting the investigation.

(3) For the purpose of giving effect to sub-paragraph (2), CIPA must make regulations which make provision—

(a) as to the criteria and procedure to be applied by CIPA in determining—

(i) whether to require a relevant person to pay an amount under sub-paragraph (2); and

(ii) the amount of any such payment;

(b) as to the arrangements for payment, including the time within which the payment is to be made; and

(c) for appeals to be made to the First-tier Tribunal against any decision made by CIPA under this paragraph

(4) If the whole or part of any payment required under sub-paragraph (2) is unpaid at the time by which it is required to be paid, CIPA may recover the unpaid balance as a debt due to it from the relevant person.

Discipline: notice, warning or reprimand

8.—(1) CIPA may issue a notice, warning or reprimand in respect of any breach of the requirements of patent attorney regulations or regulations made by CIPA under this Order, and cause this to be noted against a registered person's entry in the register of patent attorneys kept under section 275 of the 1988 Act (register of patent attorneys)(**a**).

(2) CIPA may, if it considers it appropriate to do so in any particular case, communicate to the public that it has issued a notice, warning or reprimand to a registered person under sub-paragraph (1).

(3) For the purpose of giving effect to sub-paragraph (1), CIPA must make regulations which make provision as to—

(**a**) Section 275 of the 1988 Act was substituted by section 185(3) of the Legal Services Act 2007.

(a) the breaches of the requirements of patent attorney regulations or regulations made by CIPA under this Order in respect of which CIPA may issue a notice, warning or reprimand under sub-paragraph (1);

(b) the criteria and procedure to be applied by CIPA in determining whether to issue any such notice, warning or reprimand; and

(c) the form that any such notice, warning or reprimand may take and the process by which it may be issued.

Part 2

Indemnification and Compensation Arrangements

Power to make indemnification arrangements and compensation arrangements

9.—(1) CIPA may make indemnification arrangements and compensation arrangements in relation to registered persons and regulated persons by—

(a) establishing and maintaining one or more funds;

(b) taking out and maintaining insurance with authorised insurers; or

(c) requiring registered persons, or registered persons of a description specified by the regulations, to take out and maintain insurance with authorised insurers.

(2) For the purpose of giving effect to sub-paragraph (1), CIPA may make regulations which authorise or require it to make particular arrangements and such regulations may, among other things, include provision—

(a) requiring registered persons, or registered persons of a description specified by the regulations, to pay amounts specified by the regulations to any fund which is maintained by virtue of sub-paragraph (1)(a);

(b) requiring registered persons, or registered persons of a description specified by the regulations, to make payments towards the premium payable on any insurance policy which is maintained by virtue of sub-paragraph (1)(b);

(c) specifying the conditions which an insurance policy must satisfy for the purposes of sub-paragraph (1)(c);

(d) as to the investment of any money that forms part of a fund which is maintained by virtue of sub-paragraph (1)(a) and otherwise as to the management, administration, insurance or protection of any such fund;

(e) as to the circumstances in which a grant or other payment may or may not be made under the compensation arrangements;

(f) as to the procedure for making and determining claims under the arrangements; and

(g) as to the minimum and maximum amounts payable in respect of any claim or claim of a description specified by the regulations.

(3) In this paragraph—

"registered person" includes a person who has been (but no longer is) a registered person;

"regulated person" includes a person who has been (but no longer is) a regulated person.

Power to make indemnification and compensation arrangements for both registered persons and licensed bodies

10.—(1) The powers to make indemnification arrangements or compensation arrangements which are conferred on CIPA by virtue of paragraph 9(1) and (2) may be exercised so that the arrangements apply also in relation to—

(a) a licensed body or a body which has been but no longer is a licensed body in connection with the body's activities as a licensed body; and

(b) managers and employees of licensed bodies in connection with the activities of those licensed bodies.

(2) Regulations made by CIPA under paragraph 9(2) may also include provision for the purpose of giving effect to sub-paragraph (1) which requires licensed bodies, or licensed bodies of any specific description to—

(a) pay specified amounts to a fund which is maintained by virtue of paragraph 9(1)(a); and

(b) make payments towards the premium payable on any insurance policy which is maintained by virtue of paragraph 9(1)(b).

(3) Anything permitted by virtue of this paragraph in relation to a fund or an insurance policy may be done irrespective of the persons or bodies who contributed the money.

(4) In this paragraph and paragraph 11 "licensed body" means a body which holds a licence in force under Part 5 of the 2007 Act which is granted by CIPA.

Power to make joint indemnification and compensation arrangements with ITMA

11.—(1) If CIPA and ITMA are satisfied that it would be appropriate for them to act jointly in establishing and maintaining indemnification arrangements and compensation arrangements, the powers which are conferred on CIPA by virtue of paragraphs 9(1) and (2) and 10(1) and (2) may each be exercised so as to create a single set of arrangements which apply to—

(a) both registered persons and regulated persons as defined in paragraph 14 of this Schedule and registered persons and regulated persons as defined in paragraph 14 of Schedule 4; or

(b) both persons within paragraph 10(1)(a) or (b) of this Schedule and persons within 10(1)(a) or (b) of Schedule 4; or

(c) both persons within paragraph (a) and persons within paragraph (b).

(2) Where indemnification arrangements or compensation arrangements made by virtue of this paragraph require any registered person (as defined in paragraph 14 of this Schedule) or licensed body to make contributions to the same fund or towards the same insurance policy, anything that may be done in relation to the fund or the insurance policy may be done irrespective of the persons or bodies who contributed the money.

Part 3

Powers of intervention

Powers of intervention

12.—(1) Subject to the modifications set out in sub-paragraphs (2) to (4), Schedule 14 to the 2007 Act (licensing authority's powers of intervention) applies in relation to—

(a) CIPA acting in its capacity as an approved regulator (other than in its role, if any, as a licensing authority);

(b) registered persons; and

(c) managers or employees of registered persons,

as it applies in relation to a licensing authority, the licensed bodies for which it is the licensing authority and the managers and employees of such licensed bodies.

(2) References in Schedule 14 to the 2007 Act to—

(a) a licensing authority or to the relevant licensing authority are to be read as references to CIPA;

(b) a licensed body are to be read as references to a registered person;

(c) an employee of a licensed body are to be read as references to an employee of a registered person;

(d) a manager of a licensed body are to be read as references to a manager of a CIPA-registered body;

(e) the terms of a licensed body's licence are to be read as references to the requirements to be met by a registered person in order to be an authorised person;

(f) the revocation of a licensed body's licence are to be read as references to the cancellation of a registered person's authorisation;

(g) the suspension of a licensed body's licence are to be read as references to the suspension of a registered person's authorisation; and

(h) a licensed body's licence expiring without being renewed or replaced are to be read as references to a registered person's authorisation ceasing to have effect without being renewed.

(3) Paragraph 1 of Schedule 14 has effect as if—

(a) after sub-paragraph (2)(e) there were inserted—

"(ea) that the registered person is an individual who is practising as a sole practitioner and one or more of the following apply—

(i) the individual has been committed to prison in any civil or criminal proceedings;

(ii) CIPA is satisfied that the individual has been incapacitated by illness, accident or age to such an extent as to be unable to attend to the individual's practice;

(iii) the individual lacks capacity (within the meaning of the Mental Capacity Act 2005(**a**)) to act as a registered person and powers under sections 15 to 20 or 48 of that Act (general powers of the court, interim orders and directions) are exercisable in relation to the individual;

(iv) CIPA is satisfied that the individual has abandoned the individual's practice as a registered person;

(v) the individual has made a composition or arrangement with his creditors;

(vi) any power conferred by this Schedule has been exercised in connection with suspected dishonesty on the part of the individual by virtue of paragraph (d) and the individual has practised as a sole practitioner within the period of 18 months beginning with the date on which the power was so exercised.

(eb) that the registered person was an individual who has died and who, before or at the time of their death, was practising as a sole practitioner and one or more of the following apply—

(i) CIPA is satisfied that there has been undue delay on the part of the individual's personal representatives in connection with the individual's practice or any trust of which the individual acting as a registered person was a trustee;

(ii) CIPA has reason to suspect dishonesty on the part of the individual or the individual's personal representatives in connection with the individual's business or any trust of which the individual acting as a registered person was a trustee."

(b) for sub-paragraph (3) there were substituted—

"(3) For the purposes of sub-paragraph (2) a relevant insolvency event occurs in relation to a registered person if,—

(a) in the case of a registered person who is an individual, the person has been adjudged bankrupt or has made a composition or arrangement with the person's creditors in England or Wales; or

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(**a**) 2005 c.9.

(b) in the case of a registered person who is a CIPA-registered body, in England or Wales, —

(i) a resolution for a voluntary winding-up of the body is passed without a declaration of solvency under section 89 of the Insolvency Act 1986(**a**) (statutory declaration of solvency);

(ii) the body enters administration within the meaning of paragraph 1(2)(b) of Schedule B1 to that Act(**b**) (administration);

(iii) an administrative receiver within the meaning of section 251 of that Act(**c**) (interpretation) is appointed;

(iv) a meeting of creditors is held in relation to the body under section 95 of that Act (effect of company insolvency);

(v) an order for the winding up of the body is made; or

(vi) a compromise or arrangement between the body and its creditors (or a class of them) is in force.

(c) in the case of a registered person who is a CIPA-registered body, established outside the jurisdiction of England and Wales, the body is—

(i) subject to an event in its country or, as the case may be, territory of incorporation that corresponds to an event as set out in sub-paragraphs (b)(i) to (v); or

(ii) subject to an event that corresponds to an event as set out in sub-paragraph (b)(vi).";

(c) for sub-paragraphs (5) and (6) there were substituted—

"(5) Where this Schedule applies in relation to a registered person by virtue of sub-paragraph (1)(a) it continues to apply—

(a) in the case of a registered person who is an individual—

(i) after the individual's death (and for these purposes, the Schedule is to be treated as applying to a personal representative of the individual as it would apply to a registered person);

(ii) after the individual's name has been removed from the register or the individual's registration has otherwise ceased to have effect;

(b) in the case of a CIPA-registered body, after the body's name has been removed from the register or the body's registration has otherwise ceased to have effect.

(6) For the purposes of this Schedule "registered person" includes—

(a) a person whose registration is suspended;

(b) a person to whom this Schedule continues to apply by virtue of sub-paragraph (5);

(c) except in this paragraph, a person whose name has been removed from the register or whose registration has otherwise ceased to have effect.".

(4) Paragraph 18 of Schedule 14 has effect as if in sub-paragraph (2) there were inserted before paragraph (a)—

"(za) if the registered person is an individual who is or was a partner in a partnership, any of the individual's partners or former partners;".

(**a**) 1986 c.45. To which there are amendments not relevant to this Order.

(**b**) Schedule B1 was inserted by section 248(2) of, and Schedule 16 to, the Enterprise Act 2002 (c.40). To which there are amendments not relevant to this Order.

(**c**) Amended by S.I.s 1986/1924, 2009/864 and 2010/18.

Part 4

Treatment of money

13. CIPA must make regulations which make provision as to the treatment of money (including money held on trust) which is received, held or dealt with for clients, or other persons, by registered persons or regulated persons, and as to the keeping by such persons of accounts in respect of such money.

Part 5

Interpretation

14.—(1) In this Schedule—

"patent attorney regulations" means regulations which apply to registered persons or regulated persons and which are made by CIPA acting in its capacity as an approved regulator under section 275A of the 1988 Act;

"registered person" means—

(a) an individual who is entered on the register kept by CIPA under section 275 of the 1988 Act and in relation to whom CIPA is a relevant approved regulator within the meaning of section 20(4) of the 2007 Act; or

(b) a CIPA-registered body;

"regulated person" means a person who is not a registered person but is a manager or employee of a body which is registered person.

(2) In relation to a CIPA-registered body, references in this Schedule to a manager or employee of the body include the Head of Legal Practice and the Head of Finance and Administration of that body.

(3) Regulations under this Schedule may—

(a) make provision generally or subject to exceptions or only in relation to specified cases;

(b) make different provision for different purposes.

SCHEDULE 3

Article 11(2)

ITMA-registered bodies: Head of Legal Practice and Head of Finance and Administration

Head of Legal Practice

1. Paragraphs 2 and 3 apply to any regulations made by ITMA by virtue of article 11(1)(a) which require each ITMA-registered body to have a Head of Legal Practice.

2.—(1) The regulations referred to in paragraph 1 must include the requirements in sub-paragraphs (2) to (11) and paragraph 3.

(2) Subject to sub-paragraph (3), an ITMA-registered body must at all times have an individual—

(a) who is designated as Head of Legal Practice; and

(b) whose designation is approved by ITMA.

(3) The requirement in sub-paragraph (2) may be suspended until such time and subject to such conditions as may be specified by ITMA.

(4) A designation of an individual as Head of Legal Practice has effect only while the individual—

(a) consents to the designation;

(b) is an authorised person in relation to one or more of the reserved legal activities which the ITMA-registered body is authorised by ITMA to carry on; and

(c) is not disqualified from acting as Head of Legal Practice by virtue of a disqualification under a provision specified in sub-paragraph (5).

(5) The specified provisions are—

(a) paragraph 3 of Schedule 4 (disqualification by ITMA);

(b) paragraph 3 of Schedule 2 (disqualification by CIPA); and

(c) section 99 of the 2007 Act (disqualification by a licensing authority).

(6) ITMA may approve an individual's designation as Head of Legal Practice of an ITMA-registered body in the course of determining an application for registration of that body made pursuant to regulations made under section 83A of the 1994 Act.

(7) ITMA may approve a individual's designation only if it is satisfied that the individual is a fit and proper person to carry out the duties set out in sub-paragraphs (9) and (11) in relation to that ITMA-registered body.

(8) ITMA may withdraw its approval of an individual's designation as the Head of Legal Practice of an ITMA-registered body if it is satisfied that that individual has breached one or more of the duties set out in sub-paragraphs (9) or (11) in relation to that ITMA-registered body.

(9) The Head of Legal Practice of an ITMA-registered body must—

(a) take all reasonable steps to ensure compliance with the requirements of trade mark attorney regulations, or regulations made by ITMA under this Order, which apply to that ITMA-registered body; and

(b) as soon as reasonably practicable, report to ITMA any failure to comply with such a requirement.

(10) Sub-paragraph (9) does not apply to any requirement imposed by virtue of regulations made under—

(a) section 83A(2)(h) of the 1994 Act (records or accounts); or

(b) paragraph 13 of Schedule 4 (treatment of money).

(11) The Head of Legal Practice of an ITMA-registered body must—

(a) take all reasonable steps to ensure that that ITMA-registered body and any of its managers or employees who are regulated persons comply with the duties imposed by section 176 of the 2007 Act (duties of regulated persons); and

(b) as soon as reasonably practicable, report to ITMA such failures by those persons to comply with those duties as may be specified in regulations made under this paragraph.

3. The regulations referred to in paragraph 1 must make provision—

(a) about the procedures and criteria to be applied by ITMA in determining for the purposes set out in paragraph 2(7), whether an individual is a fit and proper person to carry out the duties set out in paragraphs 2(9) and (11);

(b) for a review by ITMA of a determination that an individual is not a fit and proper person those duties;

(c) about the procedures and criteria to be applied by ITMA in determining in whether to withdraw its approval of an individual's designation as a Head of Legal Practice;

(d) for a review by ITMA of a determination to withdraw its approval of such a designation; and

(e) about the procedures which are to apply where an ITMA-registered body ceases to comply with the requirement in paragraph 2(2) to have a designated Head of Legal Practice.

Head of Finance and Administration

4. Paragraphs 6 and 7 apply to any regulations made by ITMA by virtue of article 11(1)(b) which require each ITMA-registered body to have a Head of Finance and Administration.

5.—(1) The regulations referred to in paragraph 4 must include the following requirements.

(2) Subject to sub-paragraph (3) an ITMA-registered body must at all times have an individual—

(a) who is designated as Head of Finance and Administration; and

(b) whose designation is approved by ITMA.

(3) The requirement in sub-paragraph (2) may be suspended until such time and subject to such conditions as may be specified by ITMA.

(4) A designation of an individual as Head of Finance and Administration has effect only while the individual—

(a) consents to the designation; and

(b) is not disqualified from acting as Head of Finance and Administration by virtue of a disqualification under a provision specified in paragraph 2(5).

(5) ITMA may approve an individual's designation as Head of Finance and Administration of an ITMA-registered body in the course of determining an application for registration of that body pursuant to regulations made under section 83A of the 1994 Act.

(6) ITMA may approve an individual's designation as Head of Finance and Administration of an ITMA registered body only if it is satisfied that the individual is a fit and proper person to carry out the duties set out in sub-paragraph (8) in relation to that ITMA-registered body.

(7) ITMA may withdraw its approval of an individual's designation as the Head of Finance and Administration of an ITMA-registered body if it is satisfied that the individual has breached one or more of the duties set out in sub-paragraph (8) in relation to that ITMA-registered body

(8) The Head of Finance and Administration of an ITMA-registered body must—

(a) take all reasonable steps to ensure compliance with regulations made under—

(i) section 83A(2)(h) of the 1994 Act (records or accounts) or

(ii) paragraph 13 of Schedule 4 (treatment of money); and

(b) report any breach of those regulations by that body to ITMA as soon as reasonably practicable.

6.—(1) The regulations referred to in paragraph 4 must make provision—

(a) about the procedures and criteria to be applied by ITMA in determining, for the purposes set out in paragraph 5(6), whether an individual is a fit and proper person to carry out the duties set out in paragraph 5(8);

(b) for a review by ITMA of a determination that an individual is not a fit and proper person to carry out those duties;

(c) about the procedures and criteria to be applied by ITMA in determining whether to withdraw its approval of an individual's designation as a Head of Finance and Administration of an ITMA-registered body;

(d) for a review by ITMA of a determination to withdraw its approval of such a designation; and

(e) about the procedures which are to apply where an ITMA-registered body ceases to comply with the requirement to have a designated Head of Finance and Administration.

SCHEDULE 4

Article 16(1)

ITMA as an approved regulator: regulatory arrangements

Part 1

Disciplinary arrangements

Disciplinary arrangements: financial penalties

1.—(1) In the circumstances specified in regulations made under sub-paragraph (4), ITMA may impose on a registered person or a regulated person in accordance with those regulations a penalty which is of such amount as ITMA considers appropriate.

(2) The amount of any penalty imposed under sub-paragraph (1) must not exceed—

(a) in the case of a penalty imposed on a registered person who is an individual, £5 million;

(b) in the case of a penalty imposed on a regulated person, £5 million;

(c) in the case of a penalty imposed on an ITMA-registered body, £25 million.

(3) A penalty under sub-paragraph (1) is payable to ITMA.

(4) For the purpose of giving effect to sub-paragraph (1), ITMA must make regulations as to—

(a) the acts and omissions in respect of which ITMA may impose penalties under sub-paragraph (1);

(b) the criteria and procedure to be applied by ITMA in determining whether to impose a penalty and the amount of any penalty; and

(c) arrangements for payment, including the time within which any penalty is to be paid.

2.—(1) If the whole or any part of a penalty under paragraph 1 is not paid by the time by which, in accordance with regulations made under that paragraph, it is required to be paid, the unpaid balance from time to time carries interest at the rate for the time being specified in section 17 of the Judgments Act 1838(**a**) (judgment debts to carry interest).

(2) If the whole or any part of a penalty under paragraph 1 has not been paid by the time by which, in accordance with regulations made under that paragraph, it is required to be paid, and—

(a) no appeal relating to the penalty has been made in accordance with regulations made under section 83A(2)(i) of the 1994 Act during the period within which such an appeal can be made; or

(b) an appeal has been made under any such provision and determined or withdrawn,

ITMA may recover the unpaid balance and any interest which is outstanding as a debt due to ITMA from the person on whom the penalty was imposed.

(3) ITMA must pay into the Consolidated Fund any sum received by it as a penalty under paragraph 1 or as interest on such a penalty under this paragraph.

Disciplinary arrangements: disqualification

3.—(1) ITMA may, in accordance with regulations made under sub-paragraph (6), make an order disqualifying a person from one or more of the activities mentioned in sub-paragraph (2) if—

(a) the disqualification condition is satisfied in relation to that person; and

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(**a**) 1838 c.110 (1 & 2 Vict). Section 17 was amended by the Statute Law Revision (No 2) Act 1888 c.57, the Civil Procedure Acts Repeal Act 1879 c.59 and by SI 1993/564 and SI 1998/2940.

(b) ITMA is satisfied that it is undesirable for that person to engage in that activity or those activities.

(2) The activities are—

(a) acting as Head of Legal Practice of any ITMA-registered body;

(b) acting as Head of Finance and Administration of any ITMA-registered body;

(c) being a manager of any ITMA-registered body; and

(d) being employed by any registered person.

(3) The disqualification condition is satisfied in relation to a person if that person (intentionally or through neglect)—

(a) breaches a relevant duty to which that person is subject;

(b) causes or substantially contributes to, a significant breach, by the ITMA-registered body by whom that person is employed, of the requirements of trade mark attorney regulations or regulations made by ITMA under this Order; or

(c) causes, or substantially contributes to, a significant breach by the regulated person by whom that person is employed.

(4) The relevant duties are—

(a) the duties imposed on a Head of Legal Practice by paragraphs 2(9) or (11) of Schedule 3;

(b) the duties imposed on a Head of Finance and Administration by paragraph 5(8) of Schedule 3; and

(c) the duties imposed by section 176(1) of the 2007 Act on registered persons or regulated persons.

(5) ITMA must keep a list of all persons disqualified under this paragraph.

(6) For the purpose of giving effect to sub-paragraph (1), ITMA must make regulations as to the criteria and procedure to be applied by ITMA in determining whether a person should be disqualified under this paragraph.

(7) Regulations made under sub-paragraph (6) must make provision—

(a) for a review by ITMA of a determination by ITMA that a person should be disqualified;

(b) as to the criteria and procedure to be applied by ITMA in determining whether a person's disqualification should cease to be in force; and

(c) requiring ITMA to notify the Board of any determination by ITMA that a person should be disqualified, of the results of a review of that determination and of any decision by ITMA that a person's disqualification should cease to be in force.

Disqualified employees

4. ITMA must make regulations which provide that an ITMA-registered body may not employ a person who, by virtue of a disqualification under a provision specified in paragraph 2(5) of Schedule 3, is disqualified from being a manager or employee of—

(a) a registered person as defined in paragraph 14 of this Schedule;

(b) a registered person as defined in paragraph 14 of Schedule 2; or

(c) a licensed body.

Power to require registered persons to provide information and documents

5.—(1) ITMA must make regulations which provide that ITMA may by notice require a registered person to—

(a) provide information, or information of a description, specified in the notice; or

(b) produce documents, or documents of a description, specified in the notice,

for the purpose of enabling ITMA to ascertain whether the requirements of trade mark attorney regulations or regulations made by ITMA under this Order are being, or have been complied with.

(2) Regulations made by ITMA for the purposes of sub-paragraph (1) must make the provision in sub-paragraphs (3) to (6).

(3) A notice given to a person by virtue of sub-paragraph (1)—

(a) may specify the manner and form in which any information is to be provided or documents are to be produced;

(b) must specify the period within which information is to be provided or documents are to be produced; and

(c) may require the information to be provided, or the document to be produced, to ITMA or to a person specified in the notice.

(4) ITMA may pay to any registered person (or a representative of a registered person) such reasonable costs as may be incurred by that person in complying with a notice referred to in sub-paragraph (1).

(5) ITMA or a person specified in a notice by virtue of regulations made under sub-paragraph (3)(c) may take copies of or extracts from a document produced pursuant to a notice.

(6) Where a registered person (or a representative of a registered person) refuses or otherwise fails to comply with a notice given to that person under sub-paragraph (1), that person must give ITMA a notice to that effect stating the reason why that person does not comply.

6. If a registered person refuses or otherwise fails to comply with a notice given to the person by virtue of paragraph 5(1), ITMA may apply to the High Court for an order requiring the person to comply with the notice or with such directions for the like purpose as may be contained in the order.

Power to require payment of investigation costs

7.—(1) In this paragraph—

"disciplinary measure", in relation to a relevant person, includes an arrangement where—

(a) the relevant person gives to ITMA an undertaking to do or not to do (or to cease doing) anything specified in the undertaking; and

(b) any breach of that undertaking is liable to result in the imposition by ITMA of one or more other disciplinary measures on that relevant person by virtue of paragraph 8;

"relevant person" means a registered person or a regulated person.

(2) Where—

(a) ITMA imposes a disciplinary measure on a relevant person in respect of any act or omission by the person or for which the person is responsible; and

(b) the measure is imposed following an investigation conducted by ITMA,

ITMA may, in accordance with regulations made under sub-paragraph (3), also require the relevant person to pay an amount to ITMA in respect of the whole or any part of the costs incurred by ITMA in conducting the investigation.

(3) For the purpose of giving effect to sub-paragraph (2), ITMA must make regulations which make provision—

(a) as to the criteria and procedure to be applied by ITMA in determining—

(i) whether to require a relevant person to pay an amount under sub-paragraph (2); and

(ii) the amount of any such payment;

(b) as to the arrangements for payment, including the time within which the payment is to be made; and

(c) for appeals to be made to the First-tier Tribunal against any decision made by ITMA under this article.

(4) If the whole or part of any payment required under sub-paragraph (2) is unpaid at the time by which it is required to be paid, ITMA may recover the unpaid balance as a debt due to it from the relevant person.

Discipline: notice, warning or reprimand

8.—(1) ITMA may issue a notice, warning or reprimand in respect of any breach of the requirements of trade mark attorney regulations or regulations made by ITMA under this Order, and cause this to be noted against a registered person's entry in the register of trade mark attorneys kept under section 83 of the 1994 Act (register of trade mark attorneys)(**a**).

(2) ITMA may, if it considers it appropriate to do so in any particular case, communicate to the public that it has issued a notice, warning or reprimand to a registered person under sub-paragraph (1).

(3) For the purpose of giving effect to sub-paragraph (1), ITMA must make regulations which make provision as to—

(a) the breaches of the requirements of patent attorney regulations or regulations made by ITMA under this Order in respect of which ITMA may issue a notice, warning or reprimand under sub-paragraph (1);

(b) the criteria and procedure to be applied by ITMA in determining whether to issue any such notice, warning or reprimand; and

(c) the form that any such notice, warning or reprimand may take and the process by which it may be issued.

Part 2

Indemnification and Compensation Arrangements

Power to make indemnification arrangements and compensation arrangements

9.—(1) ITMA may make indemnification arrangements and compensation arrangements which apply in relation to registered persons and regulated persons by—

(a) establishing and maintaining one or more funds;

(b) taking out and maintaining insurance with authorised insurers; or

(c) requiring registered persons, or registered persons of any specific description, to take out and maintain insurance with authorised insurers.

(2) For the purpose of giving effect to sub-paragraph (1), ITMA may make regulations which authorise or require it to make particular arrangements and such regulations may, among other things, include provision—

(a) requiring registered persons, or registered persons of a description specified by the regulations, to pay amounts specified by the regulations to any fund which is maintained by virtue of sub-paragraph (1)(a);

(b) requiring registered persons, or registered persons of a description specified by the regulations, to make payments towards the premium payable on any insurance policy which is maintained by virtue of sub-paragraph (1)(b);

(c) prescribing the conditions which an insurance policy must satisfy for the purposes of sub-paragraph (1)(c);

(d) as to the investment of any money that forms part of a fund which is maintained by virtue of sub-paragraph (1)(a) and otherwise as to the management, administration, insurance or protection of any such fund;

(**a**) 1994 c.26.

(e) as to the circumstances in which a grant or other payment may or may not be made under the compensation arrangements;

(f) as to the procedure for making and determining claims under the arrangements; and

(g) as to the minimum and maximum amounts payable in respect of any claim or claim of a description specified by the regulations.

Power to make indemnification and compensation arrangements for both registered persons and licensed bodies

10.—(1) The powers to make indemnification arrangements or compensation arrangements which are conferred on ITMA by virtue of paragraph 9(1) and (2) may be exercised so that the arrangements apply also in relation to—

(a) a licensed body or a body which has been but no longer is a licensed body in connection with the body's activities as a licensed body; and

(b) managers and employees of licensed bodies in connection with the activities of those licenced bodies.

(2) Regulations made by ITMA under paragraph 9(2) may also include provision for the purpose of giving effect to sub-paragraph (1) which requires licensed bodies, or licensed bodies of any specific description to—

(a) pay specified amounts to a fund which is maintained by virtue of paragraph 9(1)(a); and

(b) make payments towards the premium payable on any insurance policy which is maintained by virtue of paragraph 9(1)(b).

(3) Anything permitted by virtue of this paragraph in relation to a fund or an insurance policy may be done irrespective of the persons or bodies who contributed the money.

(4) In this paragraph and paragraph 11, "licensed body" means a body which holds a licence in force under Part 5 of the 2007 Act which is granted by ITMA.

Power to make joint indemnification and compensation arrangements with CIPA

11.—(1) If ITMA and CIPA are satisfied that it would be appropriate for them to act jointly in establishing and maintaining indemnification arrangements or compensation arrangements, the powers which are conferred on ITMA by virtue of paragraphs 9(1) and (2) and 10(1) and (2) may each be exercised so as to create a single set of arrangements which apply to—

(a) both registered persons and regulated persons as defined in paragraph 14 of this Schedule and registered persons and regulated persons as defined in paragraph 14 of Schedule 2; or

(b) both persons within paragraph 10(1)(a) or (b) of this Schedule and persons within 10(1)(a) or (b) of Schedule 2; or

(c) both persons within paragraph (a) and persons within paragraph (b).

(2) Where indemnification arrangements or compensation arrangements made by virtue of this paragraph require any registered person (as defined in paragraph 14 of this Schedule) or licensed body to make contributions to the same fund or towards the same insurance policy, anything that may be done in relation to the fund or the insurance policy may be done irrespective of the persons or bodies who contributed the money.

Part 3

Powers of intervention

Powers of intervention

12.—(1) Subject to the modifications set out in sub-paragraphs (2) to (4), Schedule 14 to the 2007 Act (licensing authority's powers of intervention) applies in relation to—

(a) ITMA acting in its capacity as an approved regulator (other than in its role, if any, as a licensing authority);

(b) registered persons; and

(c) managers or employees of registered persons,

as it applies in relation to a licensing authority, the licensed bodies for which it is the licensing authority and the managers and employees of such licensed bodies.

(2) References in Schedule 14 to the 2007 Act to—

(a) a licensing authority or the relevant licensing authority are to be read as references to ITMA;

(b) a licensed body are to be read as references to a registered person;

(c) an employee of a licensed body are to be read as references to an employee of a registered person;

(d) a manager of a licensed body are to be read as references to a manager of a ITMA-registered body;

(e) the terms of a licensed body's licence are to be read as references to the requirements to be met by a registered person in order to be an authorised person;

(f) the revocation of a licensed body's licence are to be read as references to the cancellation of a registered person's authorisation;

(g) the suspension of a licensed body's licence are to be read as references to the suspension of a registered person's authorisation; and

(h) a licensed body's licence expiring without being renewed or replaced are to be read as references to a registered person's authorisation ceasing to have effect without being renewed.

(3) Paragraph 1 of Schedule 14 has effect as if—

(a) after sub-paragraph (2)(e) there were inserted—

"(ea) that the registered person is an individual who is practising as a sole practitioner and one or more of the following apply—

(i) the individual has been committed to prison in any civil or criminal proceedings;

(ii) ITMA is satisfied that the individual has been incapacitated by illness, accident or age to such an extent as to be unable to attend to the individual's practice;

(iii) the individual lacks capacity (within the meaning of the Mental Capacity Act 2005(**a**)) to act as a registered person and powers under sections 15 to 20 or 48 of that Act (general powers of the court, interim orders and directions) are exercisable in relation to the individual;

(iv) ITMA is satisfied that the individual has abandoned the individual's practice as a registered person;

(v) the individual has made a composition or arrangement with his creditors;

(vi) any power conferred by this Schedule has been exercised in connection with suspected dishonesty on the part of the individual by virtue of paragraph (d) and the individual has practised as a sole practitioner within the period of 18 months beginning with the date on which the power was so exercised.

(eb) that the registered person was an individual who has died and who, before or at the time of their death, was practising as a sole practitioner and one or more of the following apply—

(**a**) 2005 c.9.

(i) ITMA is satisfied that there has been undue delay on the part of the individual's personal representatives in connection with the individual's practice or any trust of which the individual acting as a registered person was a trustee;

(ii) ITMA has reason to suspect dishonesty on the part of the individual or the individual's personal representatives in connection with the individual's business or any trust of which the individual acting as a registered person was a trustee."

(b) for sub-paragraph (3) there were substituted—

"(3) For the purposes of sub-paragraph (2) a relevant insolvency event occurs in relation to a registered person if,—

(a) in the case of a registered person who is an individual, the person has been adjudged bankrupt or has made a composition or arrangement with the person's creditors in England or Wales; or

(b) in the case of a registered person who is a ITMA-registered body in England or Wales—

(i) a resolution for a voluntary winding-up of the body is passed without a declaration of solvency under section 89 of the Insolvency Act 1986(**a**) (statutory declaration of solvency);

(ii) the body enters administration within the meaning of paragraph 1(2)(b) of Schedule B1 to that Act(**b**) (administration);

(iii) an administrative receiver within the meaning of section 251 of that Act(**c**) (interpretation) is appointed;

(iv) a meeting of creditors is held in relation to the body under section 95 of that Act (effect of company insolvency);

(v) an order for the winding up of the body is made; or

(vi) a compromise or arrangement between the body and its creditors (or a class of them) is in force.

(c) in the case of a registered person who is a ITMA-registered body, established outside the jurisdiction of England and Wales, the body is—

(i) subject to an event in its country or, as the case may be, territory of incorporation that corresponds to an event as set out in sub-paragraphs (b)(i) to (v); or

(ii) subject to an event that corresponds to an event as set out in sub-paragraph (b)(vi).";

(c) for sub-paragraphs (5) and (6) there were substituted—

"(5) Where this Schedule applies in relation to a registered person by virtue of sub-paragraph (1)(a) it continues to apply—

(a) in the case of a registered person who is an individual—

(i) after the individual's death (and for these purposes, the Schedule is to be treated as applying to a personal representative of the individual as it would apply to a registered person);

(ii) after the individual's name has been removed from the register or the individual's registration has otherwise ceased to have effect;

(**a**) 1986 c.45. To which there are amendments not relevant to this Order.

(**b**) Schedule B1 was inserted by section 248(2) of, and Schedule 16 to, the Enterprise Act 2002 (c.40). To which there are amendments not relevant to this Order.

(**c**) Amended by S.I.s 1986/1924, 2009/864 and 2010/18.

(b) in the case of a ITMA-registered body, after the body's name has been removed from the register or the body's registration has otherwise ceased to have effect.

(6) For the purposes of this Schedule "registered person" includes—

(a) a person whose registration is suspended;

(b) a person to whom this Schedule continues to apply by virtue of sub-paragraph (5);

(c) except in this paragraph, a person whose name has been removed from the register or whose registration has otherwise ceased to have effect.".

(4) Paragraph 18 of Schedule 14 has effect as if in sub-paragraph (2) there were inserted before paragraph (a)—

"(za) if the registered person is an individual who is or was a partner in a partnership, any of the individual's partners or former partners;".

Part 4

Treatment of Money

13. ITMA must make regulations which make provision as to the treatment of money (including money held on trust) which is received, held or dealt with for clients, or other persons, by registered persons or regulated persons, and as to the keeping by such persons of accounts in respect of such money.

Part 5

Interpretation

14.—(1) In this Schedule—

"registered person" means—

(a) an individual who is both registered and authorised by ITMA acting in its capacity as an approved regulator; or

(b) an ITMA-registered body;

"regulated person" means a person who is not a registered person but is a manger or employee of a body which is a registered person;

"trade mark attorney regulations" means regulations which apply to registered persons and which are made by ITMA acting in its capacity as an approved regulator under either—

(a) section 83A of the 1994 Act; or

(b) this Order.

(2) In relation to an ITMA-registered body, references in this Schedule to a regulated person include the Head of Legal Practice and the Head of Finance and Administration of that body.

(3) Regulations under this Schedule may—

(a) make provision generally or subject to exceptions or only in relation to specified cases;

(b) make different provision for different cases or circumstances or for different purposes.

EXPLANATORY NOTE

(This note is not part of the Order)

This Order modifies the functions of the Chartered Institute of Patent Attorneys (CIPA) and the Institute of Trade Mark Attorneys (ITMA) in respect of their regulatory arrangements as approved regulators under the Legal Services Act 2007 ("LSA 2007").

The regulation of legal services in England and Wales is governed by the LSA 2007. Under the Act only a person who is authorised or who is exempt from the requirement to be authorised may carry on a reserved legal activity (s.12 LSA 2007). Authorisation can be given only by approved regulators and, in relation to Alternative Business Structures or 'ABS' (described as licensable bodies in the LSA 2007), takes the form of licensing. An approved regulator may only authorise an ABS if it has been designated by the Lord Chancellor as a licensing authority (Part 5 and Schedule 10 LSA 2007).

Approved regulators regulate the activities of persons that they authorise by means of regulatory arrangements which are approved by the Legal Services Board. In relation to ABS these arrangements take the form of licensing rules (Schedule 11 LSA 2007). CIPA and ITMA are both approved regulators. Together they carry out their regulatory arrangements under the title of the Intellectual Property Regulator (IPReg).

Part 1 makes provision modifying or otherwise setting out the scope of the powers exercisable by CIPA both in its role as an approved regulator under the Legal Services Act 2007 (see Articles 3 to 5) and in its role as a licensing authority (see Articles 6 to 8). Article 9 introduces Schedules 1 and 2 which make further provision about regulatory arrangements that CIPA may make. These relate to the exercise of powers by CIPA in both these roles. The sorts of powers dealt with in the order relate to requirements for authorised bodies to appoint heads of finance and legal practice, disciplinary measures that may be imposed on authorised persons and arrangements for compensation and indemnification of authorised persons.

Part 2 and Schedules 3 and 4 make equivalent provision for ITMA.

A full regulatory impact assessment of the effect that this instrument will have on the costs of business and the voluntary sector 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.

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