EXPLANATORY MEMORANDUM TO

THE LEGAL SERVICES ACT 2007 (THE CHARTERED INSTITUTE OF PATENT ATTORNEYS AND THE INSTITUTE OF TRADE MARK ATTORNEYS) (MODIFICATION OF FUNCTIONS) ORDER 2014

2014 No. [DRAFT]

1. This explanatory memorandum has been prepared by the Ministry of Justice and is laid before Parliament by Command of Her Majesty.

2. Purpose of the instrument

2.1 The purpose of this instrument is to modify the functions of the Chartered Institute of Patent Attorneys ("CIPA") and the Institute of Trade Mark Attorneys ("ITMA") in relation to each body's regulatory arrangements within the meaning of section 21 of the Legal Services Act 2007 ("the 2007 Act").

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

3.1 None.

4. Legislative Context

4.1 The 2007 Act governs the regulation of legal services in England and Wales. Under the Act, only a person who is authorised by an approved regulator or who is exempt from the requirement to be authorised, may carry on a reserved legal activity as defined in s.12 of that Act. Approved regulators are responsible for ensuring that the persons authorised by them acts in a way that is consistent with the regulatory objectives set out in the Act. Part 2 of the 2007 Act established the Legal Services Board ("the LSB") as the oversight regulator with responsibility for approved regulators. The approved regulators and the reserved legal activities in relation to which they are designated are set out in Part 1 of Schedule 4 to the Act and in orders made under that Schedule. Part 2 of Schedule 4 allows for bodies to apply to the LSB to be recommended to the Lord Chancellor for designation as an approved regulator in relation to one or more of the reserved legal activities.

4.2 CIPA is responsible, pursuant to sections 275 and 275A of the Copyright, Designs and Patents Act 1988, for maintaining a register of patent attorneys and for regulating persons on that register ("CIPA registrants"). ITMA is responsible pursuant to sections 83 and 83A of the Trade Marks Act 1994 for maintaining a register of trade mark attorney and for regulating persons on that register ("ITMA registrants"). Both bodies are designated under the 2007 Act as approved regulators of the following reserved legal activities: The exercise of right of audience, the conduct of litigation, reserved instrument activities and the administration of oaths. In this capacity, each body authorises its registrants to carry on such activities.

Together CIPA and ITMA carry out their regulatory arrangements under the title of the Intellectual Property Regulator (IPReg).

4.3 Schedule 10 to the 2007 Act provides that an approved regulator may also be designated by the Lord Chancellor as a licensing authority. Licensing authorities may authorise (license) bodies known as alternative business structures (ABS), which are partly or wholly owned or controlled by non-lawyers to carry on reserved legal activities. Part 5 of the 2007 Act sets out arrangements under which licensing authorities may regulate such bodies.

4.4 Section 69 of the 2007 Act, under which this Order is made, allows the Lord Chancellor to make an order modifying the functions of an approved regulator or other body. The purposes for which the LSB may make a recommendation to the Lord Chancellor to make an order are set out in section 69(3), and include (amongst other things) to allow the regulator to carry out its functions more effectively and efficiently. The LSB has issued a statement of policy setting out the circumstances in which it is likely to consider it appropriate to make such a recommendation[1]. This Order also uses the powers in section 64, which lists some of the matters which can be included in a section 69 order.

5. Territorial Extent and Application

5.1 This instrument applies to England and Wales.

6. European Convention on Human Rights

6.1 The Parliamentary Under-Secretary of State, Shailesh Vara MP, has made the following statement regarding Human Rights:

"In my view the provisions of the Legal Services Act 2007 (the Chartered Institute of Patent Attorneys and the Institute of Trade Mark Attorneys) (Modification of Functions) Order 2014 are compatible with the Convention rights."

7. Policy background

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

7.1 This Order makes changes to the functions of CIPA and ITMA acting as approved regulators and, should they be designated in the future, as licensing authorities, acting in that capacity also. These changes are intended to create parity between the functions of the two bodies and parity between the functions of each body acting in either capacity (as an approved regulator or as a licensing authority). A designation order will be laid before Parliament and is due to come into force at the end of the year.

[1] This statement is available online at http://www.legalservicesboard.org.uk/what_we_do/consultations/closed/pdf/Statement_of_Policy-s69_Orders.pdf

7.2 The purpose of this Order is to enable CIPA and ITMA to effectively authorise and regulate all of their registrants in carrying on the reserved legal activities in relation to which the two bodies are designated and to do this according to the same rules irrespective of whether the registrant is an individual, a registered body (non-ABS) or a licensed body (ABS).

7.3 The functions changed or introduced by the order include their functions to establish and maintain rules about non-ABS bodies, to manage and control, provide appeal routes, require payment of investigation costs, issue notice, warning or reprimand, make further regulatory arrangements for all persons regulated by them including ABS bodies.

7.4 Part 2 and Part 3 makes provision modifying or otherwise setting out the scope of the powers exercisable by both CIPA and ITMA in their capacity as approved regulators under the 2007 Act (see Articles 3 to 5 for CIPA and Articles 10 to 12 for ITMA) and in their capacity as licensing authorities (see Articles 6 to 8 for CIPA and Articles 13 to 15 for ITMA). Schedules 1 to 4 make further provision about regulatory arrangements that CIPA and ITMA may make. These relate to the exercise of powers by both CIPA and ITMA in these capacities.

7.5 Articles 4 and 11 make provision for CIPA and ITMA (respectively) to make regulations requiring that a body which is regulated by each of them in their capacity as an approved regulator appoints a head of legal practice and a head of finance and administration.

7.6 Articles 5 and 12 make provision for CIPA and ITMA (respectively) to make regulations providing for appeals against the decisions of each body to be made either to the First-tier Tribunal or the High Court.

7.7 Articles 7 and 14 make provision for CIPA and ITMA (respectively) to exercise their powers to make disciplinary provision in order to require persons that they may regulate in their respective capacities as licensing authorities to pay costs of investigation where a disciplinary measure has been imposed against that person following an investigation.

7.8 Articles 8 and 15 also make provision in relation to the exercise by CIPA and ITMA of their disciplinary powers. These articles provide that both bodies may issue a reprimand, notice or warning and make this public.

7.9 Part 2 of Schedules 2 and 4 provide that CIPA and ITMA may make indemnification and compensation arrangements that apply to all of the persons that each body regulates in its capacity both as an approved regulator and as a licensing authority and these may be joint arrangements if both bodies are satisfied that that would be appropriate (paragraph 11, Schedules 2 and 4).

7.10 Schedule 14 to the 2007 Act makes provision about the circumstances in which a licensing authority may intervene in the practice of an ABS body, and the powers exercisable upon intervention.

- ***Consolidation***

7.11 This is a standalone order which does not make amendments to any other SI, so no question of consolidation arises.

8. Consultation outcome

8.1 There are procedural requirements relating to consultation in sections 69 and 70 of the 2007 Act. The Lord Chancellor may make an order only if the LSB has made a recommendation under section 69, annexing a draft order. Before making the recommendation to the Lord Chancellor, the LSB must publish the proposed recommendation and draft order and have regard to any representations made.

8.2 The LSB therefore consulted on a draft of this Order between 16 July and 13 August[2]. There were no responses to the consultation.

9. Guidance

9.1 No guidance is necessary in connection with this Order. The changes relate to the powers of the Chartered Institute of Patent Attorneys and the Institute of Trade Mark Attorneys and each organisation will publicise these as necessary.

10. Impact

10.1 This Order has no impact on charities or voluntary bodies. Any business impact will relate to CIPA and ITMA and their registrants as either registered bodies (non-ABS) or licensed bodies (ABS) who undertake patent and trade mark work.

10.2 This Order has no impact on the public sector.

10.3 An Impact Assessment is attached to this memorandum and will be published alongside the Explanatory Memorandum on www.legislation.gov.uk.

11. Regulating small business

11.1 This Order is not expected to have any disproportionate impact on small firms.

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[2] The consultation document can be found at http://www.legalservicesboard.org.uk/what_we_do/consultations/open/pdf/20140716_IPREG_s69_CP.pdf or obtained from Consultation Co-ordinator, Legal Services Board, One Kemble Street, London WC2B 4AN

12. Monitoring & review

12.1 Under the 2007 Act, the LSB has oversight responsibility for all the approved regulators, including CIPA and ITMA, and the LSB has a statutory duty to promote the regulatory objectives of the 2007 Act. As part of their ongoing work the LSB will monitor and review the effectiveness of this Order.

13. Contact

13.1 Please contact Mel Panteli at the Ministry of Justice (Tel: 0203 334 6147 or email: Mel.Panteli5@justice.gsi.gov.uk) about any queries regarding this Order.