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DRAFT STATUTORY INSTRUMENTS

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**2014 No.**

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

**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(1);

“the 1994 Act” means the Trade Marks Act 1994(2);

“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.

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(1) 1988 c.48.

(2) 1994 c.26.

(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.

## 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<sup>(3)</sup> (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

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(3) Section 275A was inserted by section 185(3) of the Legal Services Act 2007.

- (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(4).

### **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
- (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);

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(4) “Relevant licensing authority” is defined in section 73(4) of the Legal Services Act 2007.

- (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<sup>(5)</sup>.

## 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<sup>(6)</sup> (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.

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(5) 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.

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

## 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(7).

## Power to require payment of investigation costs

14.—(1) In this article—

“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.

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(7) “Relevant licensing authority” is defined in section 73(4) of the Legal Services Act 2007.

(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 provision*

### **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<sup>(8)</sup>.

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<sup>(8)</sup> 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.

Signed by authority of the Lord Chancellor

Date

*Name*  
Parliamentary Under Secretary of State  
Ministry of Justice