

SCHEDULES

SCHEDULE 2

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- (b) an appeal has been made under any such provision and has been determined or withdrawn,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

(1) 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.

(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.

(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) 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)(2).

(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) 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.

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