

*Draft Order laid before Parliament under section 206(4) and (5) of the Legal Services Act 2007 for
approval by resolution of each House of Parliament.*

DRAFT STATUTORY INSTRUMENTS

2014 No. XXX

LEGAL SERVICES, ENGLAND AND WALES

**The Legal Services Act 2007 (Appeals from Licensing
Authority Decisions) (Chartered Institute of Patent Attorneys
and Institute of Trade Mark Attorneys) Order 2014**

Made - - - -

Coming into force in accordance with article 2

The Lord Chancellor makes the following Order in exercise of the powers conferred by sections 80(1)(b), (4) and (5) and 204(3) and (4) of the Legal Services Act 2007(1).

In accordance with section 80(3) of that Act, the Order is made following a recommendation made by the Legal Services Board to which was annexed a draft order which was in a form not materially different from this Order.

The Legal Services Board made its recommendation under section 80 of that Act with the consents required by section 81(1) of that Act and having complied with the requirements of section 81(2) to (5) of that Act.

A draft of this Order has been approved by a resolution of each House of Parliament pursuant to section 206(4) and (5) of the Legal Services Act 2007.

Citation

1. This Order may be cited as the Legal Services Act 2007 (Appeals from Licensing Authority Decisions) (Chartered Institute of Patent Attorneys and Institute of Trade Mark Attorneys) Order 2014.

Commencement

2.—(1) Except as provided in paragraph (2), this Order comes into force on the day after the day on which it is made.

(2) Articles 4 and 5 of this Order—

- (a) do not have effect unless an order is made designating both CIPA and ITMA as licensing authorities under Part 1 of Schedule 10 to the 2007 Act in relation to one or more reserved legal activities; and
- (b) where such an order is made, come into force at the same time as that order.

Interpretation and application

3.—(1) In this Order—

- “the 2007 Act” means the Legal Services Act 2007;
- “CIPA” means the Chartered Institute of Patent Attorneys;
- “ITMA” means the Institute of Trade Mark Attorneys;
- “relevant body” means CIPA or ITMA (or both CIPA and ITMA where they act jointly).

(2) This Order applies to appeals from decisions made by the relevant body in its capacity as a licensing authority.

Appeals to be made to the First-tier Tribunal

4.—(1) The First-tier Tribunal may hear and determine appeals from decisions made by the relevant body which are appealable under any provision of—

- (a) Part 5 of the 2007 Act; or
- (b) the relevant body’s licensing rules⁽²⁾.

(2) The First-tier Tribunal may, in relation to appeals from decisions which are appealable under the licensing rules—

- (a) affirm the relevant body’s decision in whole or in part;
- (b) quash the relevant body’s decision in whole or in part;
- (c) substitute for all or part of the relevant body’s decision another decision of a kind that the relevant body could have taken; or
- (d) remit a matter to the relevant body (generally, or for determination in accordance with a finding made or direction given by the First-tier Tribunal).

Modifications of the 2007 Act

5. The Schedule to this Order (which modifies provisions of the 2007 Act) has effect.

Signed by authority of the Lord Chancellor

Date

Name
Parliamentary Under Secretary of State
Ministry of Justice

(2) Section 83 of the 2007 Act defines and makes other provision relating to licensing rules. By reason of article 4 the First-tier Tribunal is the “relevant appellate body” as defined in section 111 of the 2007 Act.

SCHEDULE

Article 5

Modifications to the 2007 Act

1. Section 96 of the 2007 Act (appeals against financial penalties) has effect in relation to a penalty imposed by the relevant body as if—

- (a) in subsection (1), “, before the end of such period as may be prescribed by rules made by the Board,” were omitted;
- (b) subsections (6) and (7) were omitted; and
- (c) for subsection (8) there were substituted—

“(8) Except as provided by this section or Part 1 of the Tribunals, Courts and Enforcement Act 2007(3), the validity of a penalty is not to be questioned by any legal proceedings whatever.”.

2.—(1) Schedule 13 (ownership of licensed bodies) has effect in relation to decisions of the relevant body with the following modifications.

(2) Paragraph 18 (appeal from decision to approve notified interest subject to conditions) has effect as if—

- (a) in sub-paragraph (1), “before the end of the prescribed period” were omitted;
- (b) sub-paragraphs (3) and (4) were omitted; and
- (c) in sub-paragraph (5), after “an appeal under this paragraph” there were inserted “or Part 1 of the Tribunals, Courts and Enforcement Act 2007”.

(3) Paragraph 20 (appeal from decision to object to a notified interest) has effect as if—

- (a) in sub-paragraph (1), “before the end of the prescribed period” were omitted;
- (b) sub-paragraphs (3) and (4) were omitted; and
- (c) in sub-paragraph (5), after “an appeal under this paragraph” there were inserted “or Part 1 of the Tribunals, Courts and Enforcement Act 2007”.

(4) Paragraph 29 (appeal from decision to approve a notifiable interest subject to conditions) has effect as if—

- (a) in sub-paragraph (1), “before the end of the prescribed period” were omitted;
- (b) sub-paragraphs (3) and (4) were omitted; and
- (c) in sub-paragraph (5), after “an appeal under this paragraph” there were inserted “or Part 1 of the Tribunals, Courts and Enforcement Act 2007”.

(5) Paragraph 32 (appeal from decision to object to acquisition of a notifiable interest) has effect as if—

- (a) in sub-paragraph (1), “before the end of the prescribed period” were omitted;
- (b) sub-paragraphs (3) and (4) were omitted; and
- (c) in sub-paragraph (5), after “an appeal under this paragraph” there were inserted “or Part 1 of the Tribunals, Courts and Enforcement Act 2007”.

(6) Paragraph 34 (appeal from decision to impose conditions (or further conditions) on existing restricted interest) has effect as if—

- (a) in sub-paragraph (1), “before the end of the prescribed period” were omitted;
- (b) sub-paragraphs (3) and (4) were omitted; and

(3) 2007 c. 15.

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- (c) in sub-paragraph (5), after “an appeal under this paragraph” there were inserted “or Part 1 of the Tribunals, Courts and Enforcement Act 2007”.
- (7) Paragraph 37 (appeal from decision to object to existing restricted interest) has effect as if—
 - (a) in sub-paragraph (1), “before the end of the prescribed period” were omitted;
 - (b) sub-paragraphs (4) and (5) were omitted; and
 - (c) in sub-paragraph (6), after “an appeal under this paragraph” there were inserted “or Part 1 of the Tribunals, Courts and Enforcement Act 2007”.
- (8) Paragraph 47 (notifying the Board of objection or condition as to a person’s holding of a restricted interest) has effect as if, in sub-paragraph (4), for “to the High Court” there were substituted “under Part 1 of the Tribunals, Courts and Enforcement Act 2007”.
- (9) Paragraph 48 (notifying the Board of approval of the holding of a restricted interest by a person included in the Board’s list of persons subject to objections and conditions) has effect as if, in sub-paragraph (3), for “to the High Court” there were substituted “under Part 1 of the Tribunals, Courts and Enforcement Act 2007”.
- (10) Paragraph 50 (appeal from decision to notify the Board where share limit or voting limit breached) has effect as if—
 - (a) in sub-paragraph (1), “before the end of the prescribed period” were omitted;
 - (b) sub-paragraphs (3) and (4) were omitted; and
 - (c) in sub-paragraph (5), after “any appeal under this paragraph” there were inserted “or Part 1 of the Tribunals, Courts and Enforcement Act 2007”.

EXPLANATORY NOTE

(This note is not part of the Order)

This Order makes provision under section 80 of the Legal Services Act 2007 (c. 29) (“the 2007 Act”) for the First-tier Tribunal to hear and determine appeals from decisions made by the Chartered Institute of Patent Attorneys (CIPA) and the Institute of Trade Mark Agents (ITMA), acting jointly or separately, in their capacity as licensing authorities. Licensing authorities regulate licensed bodies under the provisions of Part 5 of the Act (alternative business structures). The decisions are those which are appealable under Part 5 of the 2007 Act or under these bodies’ licensing rules. Section 83 of the 2007 Act defines licensing rules as rules about the licensing and regulation of licensed bodies. A separate Order will designate CIPA and ITMA as licensing authorities.

Article 4 provides for such appeals to be heard and determined by the First-tier Tribunal and sets out the powers of the First-tier Tribunal in relation to an appeal under the licensing rules. The 2007 Act provides for the grounds of appeal and the First-tier Tribunal’s powers in relation to an appeal under Part 5.

Certain provisions of the 2007 Act are modified by article 5 of, and the Schedule to, this Order in relation to appeals against decisions of CIPA and ITMA. The modifications take account of the provision in Part 1 of the Tribunals, Courts and Enforcement Act 2007 (c. 15) for appeals from the First-tier Tribunal to go to the Upper Tribunal.

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An impact assessment has been prepared for this instrument and 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.