

SCHEDULES

SCHEDULE 4

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- (b) an appeal has been made under any such provision and determined or withdrawn,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

(1) 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.

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(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
- (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) 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;

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“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 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, 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)**(2)**.

(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.

(2) 1994 c.26.