

Section 69 Order: to make provisions relating to the functions of the Chartered Institute of Patent Attorneys (CIPA) and the Institute of Trade Mark Attorneys (ITMA)

A consultation paper under section 70 of the Legal Services Act 2007 on a recommendation and a proposed draft statutory order to the Lord Chancellor to be made under Section 69 of the Legal Services Act 2007 to modify the functions of CIPA and ITMA

This consultation will close on **Wednesday 13 August 2014 at 5pm**

Contents

Introduction	1
Background	3
Summary of the proposals, the draft recommendation and the draft order	4
Draft Impact Assessment	9
How to respond	10
Complaints	10
Annex A Draft recommendation to the Lord Chancellor and draft section 69 order	11
Annex B Draft Impact Assessment	41

Introduction

1. Under section 69 of the Legal Services Act 2007 (**the Act**), the Lord Chancellor may, on the recommendation of the Legal Services Board (**LSB**), make an order to modify, or make other provision relating to, the functions of an approved regulator or any other body other than the LSB¹. This can include modifying provisions made by or under any enactment, instrument or document².
2. Any order made by the Lord Chancellor under section 69 of the Act must be made by statutory instrument³ and this must be through the affirmative procedure⁴, i.e. approved by both the House of Commons and the House of Lords, to become law.
3. Section 70 of the Act sets out the procedural requirements relating to a recommendation under section 69. Section 70(2) requires that before making a recommendation to the Lord Chancellor, the LSB publishes a draft of the proposed recommendation and the proposed draft order. Section 70(3) requires that the draft is accompanied by a notice which states that representations about the proposals may be made to the LSB within a specified period. Section 70(1) of the Act requires that the recommendation may only be made under section 69 with the consent of the approved regulator.
4. This consultation invites representations on a proposed draft recommendation and proposed draft order that, if given effect, would modify the functions of the Chartered Institute of Patent Attorneys (**CIPA**) and the Institute of Trade Mark Attorneys (**ITMA**). The modifications relate to the powers of CIPA and ITMA when acting as either an approved regulator or a licensing authority (if either or both are designated as such) as follows:
 - Allow for the making of regulations requiring registered bodies to have a Head of Legal Practice (**HoLP**) and a Head of Finance and Administration (**HoFA**)
 - Allow for appeals on decisions made by the regulatory boards (to which all regulatory functions have been delegated) to be made to the First Tier Tribunal (FTT) or the High Court (including providing for such appeals to be final and orders as to payments of costs)
 - Allow for the making of regulations to require the payment of investigation costs

¹ s69(1) and s69(2) of the Act

² s69(6) of the Act

³ s204(1) of the Act

⁴ s206(4)(h) of the Act

- Allow for notices, warnings or reprimands relating to any breach of the terms of a licensed body's licence to be noted against any record
 - Allow for indemnification and compensation arrangements, individually and jointly
 - Allow for the making of regulations for disciplinary arrangements including financial penalties; disqualification; disqualified employees; provision of information and documents; payment of investigation costs; and notices, warning and reprimands
 - Granting CIPA and ITMA, when acting as approved regulators, intervention powers that are consistent with those that will be granted automatically if each is designated as a licensing authority
 - Requiring the making of regulations for the handling of client money.
5. Any representations on the proposals should be made by 13 August 2014. The proposed draft recommendation and draft order can be found at **Annex A**. Further details on how to make representations can be found on page 10.

Background

6. CIPA and ITMA are approved regulators under the Act. In order to meet the requirements for separation of regulatory and representative functions, both CIPA and ITMA have established a regulation board (the Patent Regulation Board and the Trade Mark Regulation Board respectively) which work together as the Intellectual Property Regulation Board (**IPReg**). While the order makes modifications to the functions of CIPA and ITMA, in this paper IPReg is used when describing the exercise of regulatory functions.
7. In May 2013 IPReg, on behalf of CIPA and ITMA, submitted an application seeking a recommendation from the Board to the Lord Chancellor that CIPA and ITMA be designated as licensing authorities under Schedule 10 of the Act. Such a designation would allow IPReg to license licensable bodies (as defined in section 72 of the Act), otherwise known as alternative business structures (ABS). IPReg already authorise ABS under transitional provisions in the Act so in effect the application was designed to regularise the position and IPReg did not seek to fundamentally change the scope or approach of regulation.
8. In December 2013, the LSB granted the application and made a recommendation to the Lord Chancellor that he make an order designating CIPA and ITMA as licensing authorities. That recommendation was accepted by the Lord Chancellor on 6 March 2014 and an order is being drafted to give effect to that decision.
9. As a licensing authority, IPReg (as the regulator for CIPA and ITMA) is granted a range of powers at the point of designation. IPReg's view, and one that the LSB supports, is that it is critical that it operates a consistent regulatory framework and has recourse to the same powers irrespective of whether it is acting as the approved regulator of non-ABS firms or the licensing authority of ABS firms. This is important for both consumer protection and regulatory efficiency.
10. The draft proposed recommendation and draft order on which we are now seeking representations contains provisions which would achieve this. To ensure that there is a consistent regulatory approach, this proposed order needs to be in place before the licensing authority designation is in place.
11. This consultation is not seeking views on the policy intentions of IPReg; as part of its preparation for the designation application it consulted on the proposed regulatory arrangements, in which it was made clear that a single regulatory framework would be used. This consultation is seeking views on whether the drafting of the order delivers the policy intentions.
12. The draft order and draft impact assessment in this consultation document have been drafted in consultation with both IPReg and the Ministry of Justice.

Summary of the proposals, the draft recommendation and the draft order

13. In this section is a summary of each of the proposed changes. A copy of the draft order is in **Annex A**.

Management and control of registered bodies: requirement to have a Head of Legal Practice (HoLP) and a Head of Finance and Administration (HoFA)

CIPA: Article 4 and Schedule 1

ITMA: Article 11 and Schedule 3

14. In order to be consistent with its licensing rules for ABS, IPReg is seeking a power to allow it to make rules and regulations requiring registered bodies of CIPA and ITMA to have in place a HoLP and HoFA. This power is set out in Articles 4 and 11.
15. Schedules 1 and 3 make provision as to the specific requirements to be included in any rules made under Articles 4 and 11; these provisions largely mirror the requirements in the Act for licensing rules to the extent that section 69 vires permits.

Appeals to the First Tier Tribunal and the High Court

CIPA: Article 5

ITMA: Article 12

16. Articles 5 and 12 allow for the making of regulations for appeals. Appeals relating to decisions made by IPReg when acting as a licensing authority will be heard by the General Regulatory Chamber of the First Tier Tribunal (FTT). This is consistent with the LSB's overriding objective for all appeals to be heard by a single appellate body. In order to ensure that there is consistency for all of the bodies that they regulate, IPReg has decided that appeals on decisions it makes as an approved regulator should also be heard by the FTT.
17. While the intention is that all appeals will be heard by the FTT, the possibility of making regulations to allow appeals to be heard by the High Court has been included so that were the First Tier Tribunal structure to be amended in the future, IPReg would be able to make changes to the regulations and thus appeals could still be heard.

Power to require payment of investigation costs

CIPA: Article 7 and Schedule 2, paragraph 7

ITMA: Article 14 and Schedule 4, paragraph 7

18. Although IPReg has not had to undertake any investigations to date, in the event this is necessary the view is that the cost of any investigation that leads to a disciplinary measure (including regulatory undertakings) should be borne by the relevant person rather than IPReg (whose costs are shared across all of the bodies authorised and regulated by IPReg).
19. Articles 7 and 14 grant this power in relation to investigations as a licensing authority; paragraph 7 in each of Schedules 2 and 4 grant the same power for approved regulator investigations.

Indemnification and compensation arrangements, including joint arrangements

CIPA: Article 10 and Schedule 2, paragraphs 9 to 11

ITMA: Article 18 and Schedule 4, paragraphs 9 to 11

20. In the interest of consumer protection, all approved regulators and licensing authorities must have appropriate indemnification and compensation arrangements.
21. As part of its licensing authority application, IPReg had to put in place appropriate compensation arrangements. There are no existing arrangements in place and there is no express provision to create such arrangements in the legislation on which CIPA and ITMA are founded.
22. Paragraphs 9 of each of Schedules 2 and 4 allow IPReg to make indemnification and compensation arrangements. Paragraph 9(2) of each Schedule sets out the provisions which may be included in any regulations.
23. As at 1 April 2014 there were approximately 2500 authorised persons regulated by IPReg⁵. Given the relatively small size of this group, it is considered appropriate to maintain a single set of arrangements for all of the regulated firms, whether registered bodies or ABS and whether patent or trade mark attorneys. This is expected to result in less cost for IPReg in that it should be simpler to manage the regulation of all under a single regulatory framework, including compensation arrangements.
24. The draft order therefore contains provisions which allow for a scheme which covers both registered bodies and ABS (paragraph 10 of Schedules 2 and 4) and for CIPA and ITMA to have joint arrangements (paragraph 11 of Schedules 2 and 4).

⁵ At 1 April 2014 there were 2034 CIPA authorised persons and 794 ITMA authorised persons. These statistics include 249 who were dual registered

Disciplinary arrangements: financial penalties and disqualification

CIPA: Schedule 2, paragraphs 1 to 3

ITMA: Schedule 4, paragraphs 1 to 3

25. Consistent with the intention of having a harmonised set of regulatory arrangements for the whole of the IPReg regulated community, the order contains provisions relating to the disciplinary arrangements for regulated persons and registered bodies as follows:
- Paragraphs 1 and 2 of Schedules 2 and 4 may make arrangements for the levying and collection of financial penalties. The maximum level of financial penalty that can be imposed when acting as an approved regulator has been set at £25 million for registered bodies and £5 million for individuals. These levels are lower than those that a licensing authority can impose but IPReg are satisfied that the levels are appropriate and based upon evidence in relation to the turnover of registered bodies
 - Paragraph 3 of each Schedule sets out the powers in relation to disqualification orders including the type of activity that the disqualification can relate to; the conditions to be satisfied for a disqualification order to be made; the requirement to have in place a review procedure; and the requirement to maintain a list of disqualified persons.

Discipline: power to issue a notice, warning or reprimand

CIPA: Article 8 and Schedule 2, paragraph 8

ITMA: Article 15 and Schedule 4, paragraph 8

26. IPReg are seeking an express power to allow it to publish, for both registered bodies and ABS, details of any notice, warning or reprimand in respect of any breach of either the regulations or the terms of an ABS licence. Furthermore, any such notice, warning or reprimand may be noted in a record (public and private), including against an entry on any register maintained by IPReg. This is both in the public interest and addresses the need for regulators to be transparent about their actions including publishing details of disciplinary actions and sanctions.
27. Articles 8 and 15 grant this power when acting as a licensing authority and paragraphs 8 in each of Schedules 2 and 4 grant the same power when acting as an approved regulator.

Disqualified employees

CIPA Schedule 2, paragraph 4

ITMA Schedule 4, paragraph 4

28. In addition to the disciplinary power of disqualification, IPReg are seeking a power to make regulations that would prevent a registered body from employing

anyone who has been disqualified as a manager or employee of a registered or licensed body. Such regulations will mitigate the risk of those who (after proper consideration) are deemed not to be fit and proper persons, continuing to operate as patent or trade mark attorneys.

Power to require registered persons to provide information and documents

CIPA: Schedule 2, paragraphs 5 and 6

ITMA: Schedule 4, paragraphs 5 and 6

29. As noted above, IPReg has not so far undertaken any investigations and do not expect it to be a common event in the future. However, were it to become necessary it would be important that IPReg has access to all the information it needs to conduct a complete and fair inquiry. Consequently paragraph 5 of Schedules 2 and 4 allow for the making of regulations to require regulated persons to provide information and documents.
30. Such regulations will have to include the requirement to give a notice about the form, timing and to whom such information and documents should be provided; Paragraph 6 of Schedules 2 and 4 deal with the steps that may be taken when the registered person cannot or will not comply with such a notice.

Intervention powers

CIPA: Schedule 2, paragraph 12

ITMA: Schedule 4, paragraph 12

31. Intervention powers are an important consumer protection measure, allowing regulators to step in when businesses are, or are at the risk of, failing and there is likely to be consumer detriment. Schedule 14 of the Act sets out the intervention powers that are granted automatically on designation as a licensing authority. The provisions in Part 3 of Schedules 2 and 4 replicate (with modifications) Schedule 14, the effect of which is that IPReg has the same powers when undertaking its regulatory functions.

Money and accounts

CIPA: Schedule 2, paragraph 13

ITMA: Schedule 4, paragraph 13

32. While patent and trade mark attorneys do not generally hold significant amounts of client money, it is acknowledged that even small sums need to be treated properly. Part 4 of Schedules 2 and 4 imposes a requirement on IPReg to make regulations as to the handling of client money.

The draft recommendation and order

33. Attached at **Annex A** are:

- a draft recommendation from the LSB to the Lord Chancellor that he make the s69 order;
- a draft order.

Question 1: Do you have any comments on either the draft order or the draft recommendation?

Question 2: Does the draft order deliver the policy intentions as set out above?

Draft Impact Assessment

34. A draft impact assessment has been prepared to accompany the order and this can be found at **Annex B**. Given the available evidence, the LSB's view is that this represents a reasonable assessment of the likely costs, benefits and impact of the options.
35. The impact assessment is subject to review by the Ministry of Justice and we welcome feedback on this draft version.

Question 3: **Do you have any comments on the draft impact assessment, in particular, the costs/benefits estimates and whether any additional costs/benefits should also be identified?**

How to respond

36. We would prefer to receive responses electronically (in Microsoft word or PDF format), but hard copy responses by post or fax are also welcome. Responses should be sent to:

Post: Michael Mackay
Legal Services Board
One Kemble Street
London WC2B 4AN

Fax number: 020 7271 0051

Email: Consultations@LegalServicesBoard.org.uk

37. The consultation period will end at **5pm on Wednesday 13 August 2014**, four weeks after publication. In accordance with section 70(3) of the Act, you are given notice that any representation about the proposed section 69 draft order must be made to the LSB by the end of this period.
38. The LSB is happy to meet respondents to discuss views on the consultation if you would find that helpful. Please send requests to:
Consultations@LegalServicesBoard.org.uk
39. We consider that this consultation satisfies the requirements of section 70 of the Act to publish a proposed draft order and proposed draft recommendation before making a recommendation to the Lord Chancellor under section 69.
40. The LSB plans to publish all responses received during the consultation period on its website. While the LSB is happy to discuss varying this general policy in individual cases, there is a strong presumption in favour of transparency. It will therefore note publicly that a submission has been received from an identified body which had withheld its consent for publication in the summary of the consultation.

Complaints

41. Complaints or queries about the LSB's consultation process should be directed to Michelle Jacobs, Consultation Co-ordinator, at the following address:

Michelle Jacobs
Legal Services Board
One Kemble Street
London WC2B 4AN

Or by e-mail to: michelle.jacobs@legalservicesboard.org.uk

Annex A – Draft recommendation to the Lord Chancellor and draft section 69 order which will be annexed to the recommendation

Draft recommendation by the Legal Services Board to the Lord Chancellor under section 69 of the Legal Services Act 2007

Proposed recommendation for the Chartered Institute of Patent Attorneys and the Institute Trade Mark Attorneys (“the Institutes”)

1. At its meeting on **[DATE]**, the Legal Services Board (**LSB**) decided to make a recommendation to the Lord Chancellor that he makes an order under section 69 of the Legal Services Act 2007 (**the Act**) to modify the functions of the Institutes. A draft of the order is attached to this recommendation.
2. In accordance with the requirements of section 70(2) of the Act, the LSB published a draft of the proposed recommendation and draft order on **[DATE]** and invited representations about the proposals to be made to the LSB by **[DATE]**. **[DELETE ONE: The Board has had regard to the representations duly made] or [no representations were received].**
3. **[DELETE paragraph if no changes to the recommendation or the order in light of the consultation representations].** The draft order annexed to this recommendation is materially different to that which was consulted on. Consequently, and in accordance with the requirements of section 70(5) of the Act, before making the recommendation, we published on our website the revised draft order along with a statement detailing the changes made and the reasons for those changes.
4. In accordance with section 70(1) of the Act, the recommendation is made with the consent of the Institutes.

Chair, Legal Services Board
[DATE]

DRAFT STATUTORY INSTRUMENTS

2014 No.

LEGAL SERVICES, ENGLAND AND WALES

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

Made - - - - *****

Coming into force in accordance with article 2

CONTENTS

PART 1

General

1. Citation and interpretation
2. Commencement

PART 2

Functions of CIPA

CIPA acting as an approved regulator

3. Interpretation
4. Management and control of CIPA-registered bodies
5. Appeals to the First-tier Tribunal and the High Court
CIPA acting as a licensing authority
6. Interpretation
7. Power to require payment of investigation costs
8. Power to issue a notice, warning or reprimand
Powers to make further provision
9. Powers to make further regulatory arrangements

PART 3

Functions of ITMA

ITMA acting as an approved regulator

10. Interpretation
11. Management and control of ITMA-registered bodies
12. Appeals to the First-tier Tribunal and the High Court

ITMA acting as a licensing authority

13. Interpretation
14. Power to require payment of investigation costs
15. Power to issue a notice, warning or reprimand
Powers to make further provision
16. Powers to make further regulatory arrangements

SCHEDULES

- SCHEDULE 1 — CIPA-registered bodies: Head of Legal Practice and Head of Finance and Administration
- SCHEDULE 2 — CIPA as an approved regulator: regulatory arrangements
- SCHEDULE 3 — ITMA-registered bodies: Head of Legal Practice and Head of Finance and Administration
- SCHEDULE 4 — ITMA as an approved regulator: regulatory arrangements

The Lord Chancellor makes the following Order in exercise of the powers conferred by sections 69(1), (4) and (6) and 204(3) of the Legal Services Act 2007(a).

In accordance with section 69(2) and (3) of that Act, this Order is made following a recommendation made by the Legal Services Board(b) to which was annexed a draft Order in a form not materially different from this Order.

The Legal Services Board has made the recommendation with the consents required by section 70(1) of that Act and after complying with the requirements in section 70(2) to (4) of that Act.

In accordance with section 206(5) of that Act, a draft of this Order was laid before Parliament and approved by a resolution of each House of Parliament.

PART 1

General

Citation and interpretation

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.

(1) In this Order—

“the 1988 Act” means the Copyright, Designs and Patents Act 1988(c);

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

(a) 2007 c.29 .

(b) The Legal Services Board was established by section 2 of the Legal Services Act 2007.

(c) 1988 c.48.

(d) 1994 c.26.

“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.—• Except as provided by paragraphs (2) to (4), this Order comes into force on the day after the day on which it is made.

(1) 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.

(2) Articles 13 to 16 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.

(3) Paragraph 11(b) and (c) of Schedule 2 and paragraph 11(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.

(4) 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.

Management and control of CIPA-registered bodies

4.—• CIPA may make regulations under section 275A(2)(b) of the 1988 Act(a) (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.—• 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.

(1) 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 capacity as a licensing authority; and
- (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(b).

Power to require payment of investigation costs

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

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

- (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.—• 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.

(1) 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).

(2) 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);
- (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.—• 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(a).

(a) 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.

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.

Management and control of ITMA-registered bodies

11.—• ITMA may make regulations under section 83A(2)(b) of the 1994 Act(a) (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.

Appeals to the First-tier Tribunal and the High Court

12.—• 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.

(1) 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 capacity 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(b).

Power to require payment of investigation costs

14.—• 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;

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

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

“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.

(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.—• 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.

(1) 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).

(2) 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.—• 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(a).

Signatory text

Address

Date

Name

Ministry of Justice

SCHEDULES

SCHEDULE 1

Article 4(2)

CIPA-registered bodies: Head of Legal Practice and Head of Finance and Administration

Head of Legal Practice

1. Paragraphs 2 and 3 apply to regulations made by CIPA by virtue of article 0.□(a) which require each CIPA-registered body to have a Head of Legal Practice.

2.—• The regulations referred to in paragraph 1 must include the requirements in sub-paragraphs (2) to (11) and paragraph 3.

- (1) Subject to sub-paragraph (3), a CIPA-registered body must at all times have an individual—
 - (a) who is designated as Head of Legal Practice; and
 - (b) whose designation is approved by CIPA.

(2) The requirement in sub-paragraph (2) may be suspended until such time and subject to such conditions as may be specified by CIPA.

(3) A designation of an individual as Head of Legal Practice has effect only while the individual—

- (a) consents to the designation;
- (b) is an authorised person in relation to one or more of the reserved legal activities which the CIPA-registered body is authorised by CIPA to carry on; and
- (c) is not disqualified from acting as Head of Legal Practice by virtue of a disqualification under a provision specified in sub-paragraph (5).

(4) The specified provisions are—

- (a) paragraph 3 of Schedule 2 (disqualification by CIPA);
- (b) paragraph 3 of Schedule 4 (disqualification by ITMA); and
- (c) section 99 of the 2007 Act (disqualification by a licensing authority).

(5) CIPA may approve an individual’s designation as Head of Legal Practice of a CIPA-registered body in the course of determining an application for registration of the body made pursuant to regulations made under section 275A of the 1988 Act.

(a) 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) CIPA may approve an individual's designation as Head of Legal Practice of a CIPA-registered body only if it is satisfied that the individual is a fit and proper person to carry out the duties set out in sub-paragraphs (9) and (11) in relation to that CIPA-registered body.

(7) CIPA may withdraw its approval of an individual's designation as the Head of Legal Practice of a CIPA-registered body if it is satisfied that that individual has breached one or more of the duties set out in sub-paragraphs (9) or (11) in relation to that CIPA-registered body.

(8) The Head of Legal Practice of a CIPA-registered body must—

- (a) take all reasonable steps to ensure compliance with the requirements of patent attorney regulations, and regulations made by CIPA under this Order, which apply to that CIPA-registered body; and
- (b) as soon as reasonably practicable, report to CIPA any failure to comply with such a requirement.

(9) Sub-paragraph (9) does not apply to any requirement imposed by virtue of regulations made under—

- (a) section 275A(2)(h) of the 1988 Act (records and accounts), or
- (b) paragraph 13 of Schedule 2 (treatment of money).

(10) The Head of Legal Practice of a CIPA-registered body must—

- (a) take all reasonable steps to ensure that that CIPA-registered body and any of its managers or employees who are regulated persons, comply with the duties imposed by section 176 of the 2007 Act (duties of regulated persons); and
- (b) as soon as reasonably practicable, report to CIPA such failures by those persons to comply with those duties as may be specified in regulations made under this paragraph.

3. The regulations referred to in paragraph 1 must make provision—

- (a) about the procedures and criteria to be applied by CIPA in determining for the purposes of regulations under paragraph 2(7) whether an individual is a fit and proper person to carry out the duties set out in paragraphs 2(9) and (11);
- (b) for a review by CIPA of a determination that an individual is not a fit and proper person to carry out those duties;
- (c) about the procedures and criteria to be applied by CIPA in determining whether to withdraw its approval of an individual's designation as a Head of Legal Practice;
- (d) for a review by CIPA of a determination to withdraw its approval of such a designation; and
- (e) about the procedures which are to apply where a CIPA-registered body ceases to comply with the requirement to have a designated Head of Legal Practice.

Head of Finance and Administration

4. Paragraphs 5 and 6 apply to regulations made by CIPA by virtue of article 40.□(b) which require each CIPA-registered body to have a Head of Finance and Administration.

5.—• The regulations referred to in paragraph 4 must include the following requirements.

(1) Subject to sub-paragraph (3), a CIPA-registered body must at all times have an individual—

- (a) who is designated as Head of Finance and Administration; and
- (b) whose designation is approved by CIPA.

(2) The requirement in sub-paragraph (2) may be suspended until such time and subject to such conditions as may be specified by CIPA.

(3) A designation of an individual as Head of Finance and Administration has effect only while the individual—

- (a) consents to the designation; and

(b) is not disqualified from acting as Head of Finance and Administration by virtue of a disqualification under a provision specified in paragraph 2(4).

(4) CIPA may approve an individual's designation as Head of Finance and Administration of a CIPA-registered body in the course of determining an application for registration of that body made pursuant to regulations made under section 275A of the 1988 Act.

(5) CIPA may approve an individual's designation as Head of Finance and Administration of a CIPA-registered body only if it is satisfied that the individual is a fit and proper person to carry out the duties set out in sub-paragraph (8) in relation to that CIPA-registered body.

(6) CIPA may withdraw its approval of an individual's designation as the Head of Finance and Administration of a CIPA-registered body if it is satisfied that the individual has breached one or more of the duties set out in sub-paragraph (8) in relation to that CIPA-registered body.

(7) The Head of Finance and Administration of a CIPA-registered body must—

(a) take all reasonable steps to ensure compliance with regulations made under—

(i) section 275A(2)(h) of the 1988 Act (records and accounts), or

(ii) paragraph 13 of Schedule 2 (treatment of money); and

(b) report any breach of those regulations by that body to CIPA as soon as reasonably practicable.

6.—• The regulations referred to in paragraph 4 must make provision—

(a) about the procedures and criteria to be applied by CIPA in determining for the purposes of regulations under paragraph 5(6) whether an individual is a fit and proper person to carry out the duties set out in paragraph 5(8) and (9);

(b) for a review by CIPA of a determination that an individual is not a fit and proper person to carry out those duties;

(c) about the procedures and criteria to be applied by CIPA in determining in accordance with regulations made under paragraph 5(8) whether to withdraw its approval of an individual's designation;

(d) for a review by CIPA of a determination to withdraw its approval of such a designation; and

(e) about the procedures which are to apply where a CIPA-registered body ceases to comply with the requirement to have a designated Head of Finance and Administration.

SCHEDULE 2

Article 9(1)

CIPA as an approved regulator: regulatory arrangements

Part 1

Disciplinary arrangements

Disciplinary arrangements: financial penalties

1.—• CIPA may, in accordance with regulations made under sub-paragraph (4), impose on a registered person or a regulated person a penalty which is of such amount as CIPA considers appropriate.

(1) 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.

- (2) A penalty under sub-paragraph (1) is payable to CIPA.
- (3) 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.—• 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(a) (judgment debts to carry interest).

(1) 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.

(2) 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.—• 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;
- (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) 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.

- (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) or (9) 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(4) 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.—● 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)(c) 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 (or a representative of a registered person) is unable to comply with a notice given to a person under paragraph 5(1), the person must give CIPA a notice to that effect.

(1) Where a registered person refuses or otherwise fails to comply with a notice given to the person under sub-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.—• 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.—• 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)(a).

(1) 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).

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

(2) 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.

Part 2

Indemnification and Compensation Arrangements

Power to make indemnification arrangements and compensation arrangements

9.— • CIPA may make indemnification arrangements and compensation arrangements in relation to registered persons and regulated persons by—

- (a) establishing and maintaining one or more funds;
- (b) taking out and maintaining insurance with authorised insurers; or
- (c) requiring registered persons, or registered persons of a description specified by the regulations, to take out and maintain insurance with authorised insurers.

(2) For the purpose of giving effect to sub-paragraph (1), CIPA may make regulations which authorise or require it to make particular arrangements and such regulations may, among other things, include provision—

- (a) requiring registered persons, or registered persons of a description specified by the regulations, to pay amounts specified by the regulations to any fund which is maintained by virtue of sub-paragraph (1)(a);
- (b) requiring registered persons, or registered persons of a description specified by the regulations, to make payments towards the premium payable on any insurance policy which is maintained by virtue of sub-paragraph (1)(b);
- (c) specifying the conditions which an insurance policy must satisfy for the purposes of sub-paragraph (1)(c);
- (d) as to the investment of any money that forms part of a fund which is maintained by virtue of sub-paragraph (1)(a) and otherwise as to the management, administration, insurance or protection of any such fund;
- (e) as to the circumstances in which a grant or other payment may or may not be made under the compensation arrangements;
- (f) as to the procedure for making and determining claims under the arrangements; and
- (g) as to the minimum and maximum amounts payable in respect of any claim or claim of a description specified by the regulations.

(3) In this paragraph—

“registered person” includes a person who has been (but no longer is) a registered person;

“regulated person” includes a person who has been (but no longer is) a regulated person.

Power to make indemnification and compensation arrangements for both registered persons and licensed bodies

10.— • The powers to make indemnification arrangements or compensation arrangements which are conferred on CIPA by virtue of paragraph 0.□ and (2) may be exercised so that the arrangements apply also in relation to—

- (a) a licensed body or a body which has been but no longer is a licensed body in connection with the body's activities as a licensed body; and
- (b) managers and employees of licensed bodies in connection with the activities of those licensed bodies.

(2) Regulations made by CIPA under paragraph 9(2) may also include provision for the purpose of giving effect to sub-paragraph (1) which requires licensed bodies, or licensed bodies of any specific description to—

- (a) pay specified amounts to a fund which is maintained by virtue of paragraph 9(a); and
- (b) make payments towards the premium payable on any insurance policy which is maintained by virtue of paragraph 9(b).

(3) Anything permitted by virtue of this paragraph in relation to a fund or a insurance policy may be done irrespective of the persons or bodies who contributed the money.

(4) In this paragraph and paragraph 11 “licensed body” means a body which holds a licence in force under Part 5 of the 2007 Act which is granted by CIPA.

Power to make joint indemnification and compensation arrangements with ITMA

11.—• If CIPA and ITMA are satisfied that it would be appropriate for them to act jointly in establishing and maintaining indemnification arrangements and compensation arrangements, the powers which are conferred on CIPA by virtue of paragraphs 0.□ and (2) and 0.□ and (2) may each be exercised so as to create a single set of arrangements which apply to—

- (a) both registered persons and regulated persons as defined in paragraph 14 of this Schedule and registered persons and regulated persons as defined in paragraph 14 of Schedule 4; or
- (b) both persons within paragraph 10(1)(a) or (b) of this Schedule and persons within 10(1)(a) or (b) of Schedule 4; or
- (c) both persons within paragraph (a) and persons within paragraph (b).

(2) Where indemnification arrangements or compensation arrangements made by virtue of this paragraph require any registered person (as defined in paragraph 14 of this Schedule) or licensed body to make contributions to the same fund or towards the same insurance policy, anything that may be done in relation to the fund or the insurance policy may be done irrespective of the persons or bodies who contributed the money.

Part 3

Powers of intervention

Powers of intervention

12.—• Subject to the modifications set out in sub-paragraphs (2) to (4), Schedule 14 to the 2007 Act (licensing authority's powers of intervention) applies in relation to—

- (a) CIPA acting in its capacity as an approved regulator;
- (b) registered persons; and
- (c) managers or employees of registered persons,

as it applies in relation to a licensing authority, the licensed bodies for which it is the licensing authority and the managers and employees of such licensed bodies.

(2) References in Schedule 14 to the 2007 Act to—

- (a) a licensing authority are to be read as references to CIPA;
- (b) a licensed body are to be read as references to a registered person;
- (c) an employee of a licensed body are to be read as references to an employee of registered person;

- (d) a manager of a licensed body are to be read as references to a manager of a CIPA-registered body;
- (e) the terms of a licensed body's licence are to be read as references to the requirements to be met by a registered person in order to be an authorised person;
- (f) the revocation of a licensed body's licence are to be read as references to the cancellation of a registered person's authorisation;
- (g) the suspension of a licensed body's licence are to be read as references to the suspension of a registered person's authorisation; and
- (h) a licensed body's licence expiring without being renewed or replaced are to be read as references to a registered person's authorisation ceasing to have effect without being renewed.

(3) Paragraph 1 of Schedule 14 has effect as if—

(a) after sub-paragraph (2)(e) there were inserted—

“(ea) that the registered person is an individual who is practising as a sole practitioner and one or more of the following apply—

- (i) the individual has been committed to prison in any civil or criminal proceedings;
- (ii) CIPA is satisfied that the individual has been incapacitated by illness, accident or age to such an extent as to be unable to attend to the individual's practice;
- (iii) the individual lacks capacity (within the meaning of the Mental Capacity Act 2005(a)) to act as a registered person and powers under sections 15 to 20 or 48 of that Act (general powers of the court, interim orders and directions) are exercisable in relation to the individual;
- (iv) CIPA is satisfied that the individual has abandoned the individual's practice as a registered person;
- (v) the individual has made a composition or arrangement with his creditors;
- (vi) any power conferred by this Schedule has been exercised in connection with suspected dishonesty on the part of the individual by virtue of paragraph (d) and the individual has practised as a sole practitioner within the period of 18 months beginning with the date on which the power was so exercised.

(eb) that the registered person was an individual who has died who, before or at the time of their death, was practising as a sole practitioner and one or more of the following apply—

- (i) CIPA is satisfied that there has been undue delay on the part of the individual's personal representatives in connection with the individual's practice or any trust of which the individual acting as a registered person was a trustee;
- (ii) CIPA has reason to suspect dishonesty on the part of the individual or the individual's personal representatives in connection with the individual's business or any trust of which the individual acting as a registered person was a trustee.”

(b) for sub-paragraph (3) there were substituted—

“(3) For the purposes of sub-paragraph (2) a relevant insolvency event occurs in relation to a registered person if,—

- (a) in the case of a registered person who is an individual, the person has been adjudged bankrupt or has made a composition or arrangement with the person's creditors in England or Wales; or

(a) 2005 c.9.

- (b) in the case of a registered person who is a CIPA-registered body, in England or Wales, —
 - (i) a resolution for a voluntary winding-up of the body is passed without a declaration of solvency under section 89 of the Insolvency Act 1986^(a) (statutory declaration of solvency);
 - (ii) the body enters administration within the meaning of paragraph 1(2)(b) of Schedule B1 to that Act^(b) (administration);
 - (iii) an administrative receiver within the meaning of section 251 of that Act^(c) (interpretation) is appointed;
 - (iv) a meeting of creditors is held in relation to the body under section 95 of that Act (effect of company insolvency);
 - (v) an order for the winding up of the body is made; or
 - (vi) a compromise or arrangement between the body and its creditors (or a class of them) is in force.
- (c) in the case of a registered person who is a CIPA-registered body, established outside the jurisdiction of England and Wales, the body is—
 - (i) subject to an event in its country or, as the case may be, territory of incorporation that corresponds to an event as set out in sub-paragraphs (b)(i) to (v); or
 - (ii) subject to an event that corresponds to an event as set out in sub-paragraph (b)(vi).”;
- (c) for sub-paragraphs (5) and (6) there were substituted—
 - “(5) Where this Schedule applies in relation to a registered person by virtue of sub-paragraph (1)(a) it continues to apply—
 - (a) in the case of a registered person who is an individual—
 - (i) after the individual’s death (and for these purposes, the Schedule is to be treated as applying to a personal representative of the individual as it would apply to a registered person);
 - (ii) after the individual’s name has been removed from the register or the individual’s registration has otherwise ceased to have effect;
 - (b) in the case of a CIPA-registered body, after the body’s name has been removed from the register or the body’s registration has otherwise ceased to have effect.
 - (6) For the purposes of this Schedule “registered person” includes—
 - (a) a person whose registration is suspended;
 - (b) a person to whom this Schedule continues to apply by virtue of sub-paragraph (5);
 - (c) except in this paragraph, a person whose name has been removed from the register or whose registration has otherwise ceased to have effect.”.
- (4) Paragraph 18 of Schedule 14 has effect as if in sub-paragraph (2) there were inserted before paragraph (a)—
 - “(za) if the registered person is an individual who is or was a partner in a partnership, any of the individual’s partners or former partners;”.

(a) 1986 c.45. To which there are amendments not relevant to this Order.
 (b) Schedule B1 was inserted by section 248(2) of, and Schedule 16 to, the Enterprise Act 2002 (c.40). To which there are amendments not relevant to this Order.
 (c) Amended by S.I.s 1986/1924, 2009/864 and 2010/18.

Part 4

Treatment of money

13. CIPA must make regulations which make provision as to the treatment of money (including money held on trust) which is received, held or dealt with for clients, or other persons, by registered persons or regulated persons, and as to the keeping by such persons of accounts in respect of such money.

Part 5

Interpretation

14.—● In this Schedule—

“patent attorney regulations” means regulations which apply to registered persons or regulated persons and which are made by CIPA acting in its capacity as an approved regulator under section 275A of the 1988 Act;

“registered person” means—

- (a) an individual who is entered on the register kept by CIPA under section 275 of the 1988 Act and in relation to whom CIPA is a relevant approved regulator within the meaning of section 20(4) of the 2007 Act; or
- (b) a CIPA-registered body;

“regulated person” means a person who is not a registered person but is a manager or employee of a body which is registered person.

(2) In relation to a CIPA-registered body, references in this Schedule to a manager or employee of the body include the Head of Legal Practice and the Head of Finance and Administration of that body.

(3) Regulations under this Schedule may—

- (a) make provision generally or subject to exceptions or only in relation to specified cases;
- (b) make different provision for different purposes.

SCHEDULE 3

Article 11(2)

ITMA-registered bodies: Head of Legal Practice and Head of Finance and Administration

Head of Legal Practice

1. Paragraphs 2 and 3 apply to any regulations made by ITMA by virtue of article 0.□(a) which require each ITMA-registered body to have a Head of Legal Practice.

2.—● The regulations referred to in paragraph 1 must include the requirements in sub-paragraphs (2) to (11) and paragraph 3.

(1) Subject to sub-paragraph (3), an ITMA-registered body must at all times have an individual—

- (a) who is designated as Head of Legal Practice; and
- (b) whose designation is approved by ITMA.

(2) The requirement in sub-paragraph (2) may be suspended until such time and subject to such conditions as may be specified by ITMA.

(3) A designation of an individual as Head of Legal Practice has effect only while the individual—

- (a) consents to the designation;
- (b) is an authorised person in relation to one or more of the reserved legal activities which the ITMA-registered body is authorised by ITMA to carry on; and
- (c) is not disqualified from acting as Head of Legal Practice by virtue of a disqualification under a provision specified in sub-paragraph (5).

(4) The specified provisions are—

- (a) paragraph 3 of Schedule 4 (disqualification by ITMA);
- (b) paragraph 3 of Schedule 2 (disqualification by CIPA); and
- (c) section 99 of the 2007 Act (disqualification by a licensing authority).

(5) ITMA may approve an individual's designation as Head of Legal Practice of an ITMA-registered body in the course of determining an application for registration of that body made pursuant to regulations made under section 83A of the 1994 Act.

(6) ITMA may approve a individual's designation only if it is satisfied that the individual is a fit and proper person to carry out the duties set out in sub-paragraphs (9) and (11) in relation to that ITMA-registered body.

(7) ITMA may withdraw its approval of an individual's designation as the Head of Legal Practice of an ITMA-registered body if it is satisfied that that individual has breached one or more of the duties set out in sub-paragraphs (9) or (11) in relation to that ITMA-registered body.

(8) The Head of Legal Practice of an ITMA-registered body must—

- (a) take all reasonable steps to ensure compliance with the requirements of trade mark attorney regulations, or regulations made by ITMA under this Order, which apply to that ITMA-registered body; and
- (b) as soon as reasonably practicable, report to ITMA any failure to comply with such a requirement.

(9) Sub-paragraph (9) does not apply to any requirement imposed by virtue of regulations made under—

- (a) section 83A(2)(h) of the 1994 Act (records or accounts); or
- (b) paragraph 13 of Schedule 4 (treatment of money).

(10) The Head of Legal Practice of an ITMA-registered body must—

- (a) take all reasonable steps to ensure that that ITMA-registered body and any of its managers or employees who are regulated persons comply with the duties imposed by section 176 of the 2007 Act (duties of regulated persons); and
- (b) as soon as reasonably practicable, report to ITMA such failures by those persons to comply with those duties as may be specified in regulations made under this paragraph.

3. The regulations referred to in paragraph 1 must make provision—

- (a) about the procedures and criteria to be applied by ITMA in determining for the purposes set out in paragraph 2(5), whether an individual is a fit and proper person to carry out the duties set out in paragraphs 2(9) and (11);
- (b) for a review by ITMA of a determination that an individual is not a fit and proper person those duties;
- (c) about the procedures and criteria to be applied by ITMA in determining in whether to withdraw its approval of an individual's designation as a Head of Legal Practice;

- (d) for a review by ITMA of a determination to withdraw its approval of such a designation; and
- (e) about the procedures which are to apply where an ITMA-registered body ceases to comply with the requirement in paragraph 2(2) to have a designated Head of Legal Practice.

Head of Finance and Administration

4. Paragraphs 5 and 6 apply to any regulations made by ITMA by virtue of article 0.(b) which require each ITMA-registered body to have a Head of Finance and Administration.

5.—• The regulations referred to in paragraph 4 must include the following requirements.

(1) Subject to sub-paragraph (3) an ITMA-registered body must at all times have an individual—

- (a) who is designated as Head of Finance and Administration; and
- (b) whose designation is approved by ITMA.

(2) The requirement in sub-paragraph (2) may be suspended until such time and subject to such conditions as may be specified by ITMA.

(3) A designation of an individual as Head of Finance and Administration has effect only while the individual—

- (a) consents to the designation; and
- (b) is not disqualified from acting as Head of Finance and Administration by virtue of a disqualification under a provision specified in paragraph 2(4).

(4) ITMA may approve an individual's designation as Head of Finance and Administration of an ITMA-registered body in the course of determining an application for registration of that body pursuant to regulations made under section 83A of the 1994 Act.

(5) ITMA may approve an individual's designation as Head of Finance and Administration of an ITMA registered body only if it is satisfied that the individual is a fit and proper person to carry out the duties set out in sub-paragraph (8) in relation to that ITMA-registered body.

(6) ITMA may withdraw its approval of an individual's designation as the Head of Finance and Administration of an ITMA-registered body if it is satisfied that the individual has breached one or more of the duties set out in sub-paragraph (8) in relation to that ITMA-registered body

(7) The Head of Finance and Administration of an ITMA-registered body must—

- (a) take all reasonable steps to ensure compliance with regulations made under—
 - (i) section 275A(2)(h) of the 1988 Act (records or accounts) or
 - (ii) paragraph 13 of Schedule 4 (treatment of money); and
- (b) report any breach of those regulations by that body to ITMA as soon as reasonably practicable.

6.—• The regulations referred to in paragraph 4 must make provision—

- (a) about the procedures and criteria to be applied by ITMA in determining, for the purposes set out in paragraph 5(6), whether an individual is a fit and proper person to carry out the duties set out in paragraph 5(8);
- (b) for a review by ITMA of a determination that an individual is not a fit and proper person to carry out those duties;
- (c) about the procedures and criteria to be applied by ITMA in determining whether to withdraw its approval of an individual's designation as a Head of Finance and Administration of an ITMA-registered body;
- (d) for a review by ITMA of a determination to withdraw its approval of such a designation; and

- (e) about the procedures which are to apply where an ITMA-registered body ceases to comply with the requirement to have a designated Head of Finance and Administration..

SCHEDULE 4

Article 16(1)

ITMA as an approved regulator: regulatory arrangements

Part 1

Disciplinary arrangements

Disciplinary arrangements: financial penalties

1.—• ITMA may, in accordance with regulations made under sub-paragraph (4), impose on a registered person or a regulated person a penalty which is of such amount as ITMA considers appropriate.

- (1) 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.
- (2) A penalty under sub-paragraph (1) is payable to ITMA.
- (3) 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.—• 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(a) (judgment debts to carry interest).

(1) 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.

(2) 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.—• 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) 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.

- (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; or
 - (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.
 - (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);
 - (b) the duties imposed on a Head of Finance and Administration by paragraph 5(8) of Schedule 1; and
 - (c) the duties imposed by section 176(1) 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(4) 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 15 Schedule 2; or
- (c) a licensed body.

Power to require registered persons to provide information and documents

5.—● 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 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 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)(c) 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.—• Where a registered person (or a representative of a registered person) is unable to comply with a notice give to a person pursuant to paragraph 5(1), the person must give ITMA a notice to that effect

(1) If a registered person refuses or otherwise fails to comply with a notice given to the person by virtue sub-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.—• 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;

“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 article.

(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.—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)^a.

(1) 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).

(2) 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.

Part 2

Indemnification and Compensation Arrangements

Power to make indemnification arrangements and compensation arrangements

9.—ITMA may make indemnification arrangements and compensation arrangements which apply in relation to registered persons and regulated persons by—

- (a) establishing and maintaining one or more funds;
- (b) taking out and maintaining insurance with authorised insurers; or
- (c) requiring registered persons, or registered persons of any specific description, to take out and maintain insurance with authorised insurers.

(2) For the purpose of giving effect to sub-paragraph (1), ITMA may make regulations which authorise or require it to make particular arrangements and such regulations may, among other things, include provision—

- (a) requiring registered persons, or registered persons of a description specified by the regulations, to pay amounts specified by the regulations to any fund which is maintained by virtue of sub-paragraph (1)(a);
- (b) requiring registered persons, or registered persons of a description specified by the regulations, to make payments towards the premium payable on any insurance policy which is maintained by virtue of sub-paragraph (1)(b);
- (c) prescribing the conditions which an insurance policy must satisfy for the purposes of sub-paragraph (1)(c);

^a 1994 c 26.

- (d) as to the investment of any money that forms part of a fund which is maintained by virtue of sub-paragraph (1)(a) and otherwise as to the management, administration, insurance or protection of any such fund;
- (e) as to the circumstances in which a grant or other payment may or may not be made under the compensation arrangements;
- (f) as to the procedure for making and determining claims under the arrangements; and
- (g) as to the minimum and maximum amounts payable in respect of any claim or claim of a description specified by the regulations.

Power to make indemnification and compensation arrangements for both registered persons and licensed bodies

10.—• The powers to make indemnification arrangements or compensation arrangements which are conferred on ITMA by virtue of paragraph 9(1) and (2) may be exercised so that the arrangements apply also in relation to—

- (a) a licensed body or a body which has been but no longer is a licensed body in connection with the body’s activities as a licensed body; and
- (b) managers and employees of licensed bodies in connection with the activities of those licensed bodies.

(2) Regulations made by ITMA under paragraph 9(2) may also include provision for the purpose of giving effect to sub-paragraph (1) which requires licensed bodies, or licensed bodies of any specific description to—

- (a) pay specified amounts to a fund which is maintained by virtue of paragraph 9(a); and
- (b) make payments towards the premium payable on any insurance policy which is maintained by virtue of paragraph 9(b).

(3) Anything permitted by virtue of this paragraph in relation to a fund or a insurance policy may be done irrespective of the persons or bodies who contributed the money.

(4) In this paragraph and paragraph 11, “licensed body” means a body which holds a licence in force under Part 5 of the 2007 Act which is granted by ITMA.

Power to make joint indemnification and compensation arrangements with CIPA

11.—• If ITMA and CIPA are satisfied that it would be appropriate for them to act jointly in establishing and maintaining indemnification arrangements or compensation arrangements, the powers which are conferred on ITMA by virtue of paragraphs 0.□ and (2) and 0.□ and (2) may each be exercised so as to create a single set of arrangements which apply to—

- (a) both registered persons and regulated persons as defined in paragraph 14 of this Schedule and registered persons and regulated persons as defined in paragraph 15 of Schedule 4; or
- (b) both persons within paragraph 10(1)(a) or (b) of this Schedule and persons within 10(1)(a) or (b) of Schedule 4; or
- (c) both persons within paragraph (a) and persons within paragraph (b).

(2) Where indemnification arrangements or compensation arrangements made by virtue of this paragraph require any registered person (as defined in paragraph 14 of this Schedule) or licensed body to make contributions to the same fund or towards the same insurance policy, anything that may be done in relation to the fund or the insurance policy may be done irrespective of the persons or bodies who contributed the money.

Part 3

Powers of intervention

Powers of intervention

12.—● Subject to the modifications set out in sub-paragraphs (2) to (4), Schedule 14 to the 2007 Act (licensing authority's powers of intervention) applies in relation to—

- (a) ITMA acting in its capacity as an approved regulator;
- (b) registered persons; and
- (c) managers or employees of registered persons,

as it applies in relation to a licensing authority, the licensed bodies for which it is the licensing authority and the managers and employees of such licensed bodies.

(2) References in Schedule 14 to the 2007 Act to—

- (a) a licensing authority are to be read as references to ITMA;
- (b) a licensed body are to be read as references to a registered person;
- (c) an employee of a licensed body are to be read as references to an employee of registered person;
- (d) a manager of a licensed body are to be read as references to a manager of a ITMA-registered body;
- (e) the terms of a licensed body's licence are to be read as references to the requirements to be met by a registered person in order to be an authorised person;
- (f) the revocation of a licensed body's licence are to be read as references to the cancellation of a registered person's authorisation;
- (g) the suspension of a licensed body's licence are to be read as references to the suspension of a registered person's authorisation; and
- (h) a licensed body's licence expiring without being renewed or replaced are to be read as references to a registered person's authorisation ceasing to have effect without being renewed.

(3) Paragraph 1 of Schedule 14 has effect as if—

(a) after sub-paragraph (2)(e) there were inserted—

“(ea) that the registered person is an individual who is practising as a sole practitioner and one or more of the following apply—

- (i) the individual has been committed to prison in any civil or criminal proceedings;
- (ii) ITMA is satisfied that the individual has been incapacitated by illness, accident or age to such an extent as to be unable to attend to the individual's practice;
- (iii) the individual lacks capacity (within the meaning of the Mental Capacity Act 2005(a)) to act as a registered person and powers under sections 15 to 20 or 48 of that Act (general powers of the court, interim orders and directions) are exercisable in relation to the individual;
- (iv) ITMA is satisfied that the individual has abandoned the individual's practice as a registered person;
- (v) the individual has made a composition or arrangement with his creditors;
- (vi) any power conferred by this Schedule has been exercised in connection with suspected dishonesty on the part of the individual by virtue of paragraph (d) and the individual has practised as a sole practitioner within the period of 18 months beginning with the date on which the power was so exercised.

(a) 2005 c.9.

- (eb) that the registered person was an individual who has died who, before or at the time of their death, was practising as a sole practitioner and one or more of the following apply—
 - (i) ITMA is satisfied that there has been undue delay on the part of the individual’s personal representatives in connection with the individual’s practice or any trust of which the individual acting as a registered person was a trustee;
 - (ii) ITMA has reason to suspect dishonesty on the part of the individual or the individual’s personal representatives in connection with the individual’s business or any trust of which the individual acting as a registered person was a trustee.”
- (b) for sub-paragraph (3) there were substituted—

“(3) For the purposes of sub-paragraph (2) a relevant insolvency event occurs in relation to a registered person if,—

 - (a) in the case of a registered person who is an individual, the person has been adjudged bankrupt or has made a composition or arrangement with the person’s creditors in England or Wales; or
 - (b) in the case of a registered person who is a ITMA-registered body in England or Wales—
 - (i) a resolution for a voluntary winding-up of the body is passed without a declaration of solvency under section 89 of the Insolvency Act 1986^(a) (statutory declaration of solvency);
 - (ii) the body enters administration within the meaning of paragraph 1(2)(b) of Schedule B1 to that Act^(b) (administration);
 - (iii) an administrative receiver within the meaning of section 251 of that Act^(c) (interpretation) is appointed;
 - (iv) a meeting of creditors is held in relation to the body under section 95 of that Act (effect of company insolvency);
 - (v) an order for the winding up of the body is made; or
 - (vi) a compromise or arrangement between the body and its creditors (or a class of them) is in force.
 - (c) in the case of a registered person who is a ITMA-registered body, established outside the jurisdiction of England and Wales, the body is—
 - (i) subject to an event in its country or, as the case may be, territory of incorporation that corresponds to an event as set out in sub-paragraphs (b)(i) to (v); or
 - (ii) subject to an event that corresponds to an event as set out in sub-paragraph (b)(vi).”;
- (c) for sub-paragraphs (5) and (6) there were substituted—

“(5) Where this Schedule applies in relation to a registered person by virtue of sub-paragraph (1)(a) it continues to apply—

 - (a) in the case of a registered person who is an individual—
 - (i) after the individual’s death (and for these purposes, the Schedule is to be treated as applying to a personal representative of the individual as it would apply to a registered person);

(a) 1986 c.45. To which there are amendments not relevant to this Order.
 (b) Schedule B1 was inserted by section 248(2) of, and Schedule 16 to, the Enterprise Act 2002 (c.40). To which there are amendments not relevant to this Order.
 (c) Amended by S.I.s 1986/1924, 2009/864 and 2010/18.

- (ii) after the individual's name has been removed from the register or the individual's registration has otherwise ceased to have effect;
 - (b) in the case of a ITMA-registered body, after the body's name has been removed from the register or the body's registration has otherwise ceased to have effect.
- (6) For the purposes of this Schedule "registered person" includes—
- (a) a person whose registration is suspended;
 - (b) a person to whom this Schedule continues to apply by virtue of sub-paragraph (5);
 - (c) except in this paragraph, a person whose name has been removed from the register or whose registration has otherwise ceased to have effect.”.
- (4) Paragraph 18 of Schedule 14 has effect as if in sub-paragraph (2) there were inserted before paragraph (a)—
- “(za) if the registered person is an individual who is or was a partner in a partnership, any of the individual's partners or former partners;”.

Part 4

Money and accounts

13. ITMA must make regulations which make provision as to the treatment of money (including money held on trust) which is received, held or dealt with for clients, or other persons, by registered persons or regulated persons, and as to the keeping by such persons of accounts in respect of such money.

Part 5

Interpretation

14.—• In this Schedule—

“registered person” means—

- (a) an individual who is both registered and authorised by ITMA acting in its capacity as an approved regulator; or
- (b) an ITMA-registered body;

“regulated person” means a person who is not a registered person but is a manager or employee of a body which is a registered person;

“trade mark attorney regulations” means regulations which apply to registered persons and which are made by ITMA acting in its capacity as an approved regulator under either—

- (a) section 83A of the 1994 Act; or
- (b) this Order.

(2) In relation to an ITMA-registered body, references in this Schedule to a regulated person include the Head of Legal Practice and the Head of Finance and Administration of that body.

(3) Regulations under this Schedule may—

- (a) make provision generally or subject to exceptions or only in relation to specified cases;
- (b) make different provision for different cases or circumstances or for different purposes.

EXPLANATORY NOTE

(This note is not part of the Order)

This Order modifies the functions of the Chartered Institute of Patent Attorneys (CIPA) and the Institute of Trade Mark Attorneys (ITMA).

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

Part 2 makes provision modifying or otherwise setting out the scope of the powers exercisable by CIPA both in its capacity as an Approved Regulator under the Legal Services Act 2007 (see Articles 3 to 5) and in its capacity as a licensing authority (see Articles 6 to 8). Schedules 1 and 2 make further provision about regulatory arrangements that CIPA may make. These relate to the exercise of powers by CIPA in both these capacities.

Part 3 makes equivalent provision for ITMA; modifying or otherwise setting out the scope of the powers both in its capacity as an Approved Regulator under the Legal Services Act 2007 (see Articles 10 to 12) and in its capacity as a licensing authority (see Articles 13 to 15). Schedules 3 and 4 make further provision about regulatory arrangements that ITMA may make. These relate to the exercise of powers by ITMA in both these capacities.

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. Schedules 1 and 3 set out the requirements that must be included in such regulations should either body choose to make such provision.

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.

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. 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. Part 1 of Schedules 2 and 4 make equivalent provision for CIPA and ITMA (respectively) in their capacity as approved regulators and also makes further provision about powers that CIPA and ITMA may exercise in this capacity, equivalent to provisions in Schedule 11 of the 2007 Act (licensing rules).

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).

Schedule 14 to the 2007 Act makes provision about the circumstances in which a licensing authority may intervene in the practice of a licensed body, and the powers exercisable upon intervention. Part 3 of Schedules 2 and 4 of this Order make non-textual modifications to Schedule 14 to the 2007 Act and apply it to CIPA and ITMA (respectively) in each body's capacity as an approved regulator and also to registered persons and their managers and employees.

Part 4 of Schedules 2 and 4 provide that CIPA and ITMA must make regulations about the treatment of client money.

An impact assessment has been prepared for this Order and is available at [to be completed].

Section 69 order: Modification of the functions of the Chartered Institute of Patent Attorneys (CIPA) and the Institute of Trade Mark Attorneys (ITMA)	
Stage	Consultation on the DRAFT IA
Date	July 2014
Policy Area	MoJ
Lead department or agency	Legal Services Board (LSB)
Other department or agency	Intellectual Property Regulation Board (IPReg)
Contact for enquiries	To be added for final version
Summary of the measures in the policy area	
<p>What are the problems that the measures address? CIPA and ITMA are approved regulators under the Legal Services Act 2007 (LSA) and have applied to be designated as licensing authorities for alternative business structures (ABS). Their regulatory functions are delegated to the Intellectual Property Regulation Board (IPReg). In some critical areas, the legislation that governs the regulation of ABS and non-ABS does not provide sufficient powers to ensure that the way in which IPReg regulates firms adequately protects consumers and is effective and appropriate. A number of changes are proposed to ensure adequate consumer protection and reduce inefficiencies. Government intervention is necessary as the proposed changes require legislation.</p>	
<p>What are the measures? What is the objective/aim of the measure? What is the rationale for their introduction? How do they fit into the wider MoJ/Government Agenda? To propose a section 69 order which addresses the objectives outlined above in respect of modifying the functions of IPReg, as both an approved regulator and licensing authority by a section 69 order, to gain powers under the status as a licensing authority to: require regulated persons to make contributions to compensation arrangements jointly operated by CIPA and ITMA and, allow IPReg to recover costs of investigations. The section 69 order will also allow IPReg to gain powers under the status of an approved regulator to establish compensation arrangements and allow IPReg to disqualify individuals in non-ABS firms.</p> <p>The main policy objective is to ensure that all consumers of legal services benefit from an equal level of protection; regardless of who is regulating the service provider or on what basis they are doing so. Granting CIPA and ITMA (together as IPReg) equal powers to regulate firms (both ABS and non-ABS) allows for consistency in regulation particularly for disciplinary cases. It also allows for a consistent and improved efficiency of the regulatory framework for legal services. Other policy objectives include providing the bodies concerned with a statutory basis for the desired powers and assurance for those being regulated and a reduction of the risk of legal challenge.</p>	
<p>What are the main impacts of the measures and which groups of people do they affect?</p> <p>Overview of impacts: The net costs are not believed to be significant, given the number of firms impacted and the low costs to them and to IPReg. The benefits, in terms of improved efficiency and effectiveness and greater fairness in the regulatory system outweigh any such costs.</p>	

Annual profile of monetised costs and benefits (£000's constant prices)										
	yr0	yr1	yr2	yr3	yr4	yr5	yr6	yr7	yr8	yr9
Total annual costs	88	17.5	17.5	17.5	17.5	17.5	17.5	17.5	17.5	17.5
Total annual benefits	NQ	NQ	NQ	NQ	NQ	NQ	NQ	NQ	NQ	NQ
Total net benefits	NQ	NQ	NQ	NQ	NQ	NQ	NQ	NQ	NQ	NQ

Price base year	PV Base Year	PV time period	Overall NPV
2013	2013	10	£0.22m

Key costs and benefits

Group Affected	Description of Costs	Can the impact be quantified?	Detail
IPReg	To bear monetised costs for set up and operation of the compensation arrangements; a total of £30K-£35K in the first year provided through an insurance policy to compensate claimants.	Set up & operation: £30K to £35K in first year.	Page 9-30.
IPReg	To bear the costs of the FTT in hearing appeals; £38K in the first year with unit running costs per case of £3,500. Appeals likely to be in lower quartile 0-10 per year; overall cost to IPReg not significant. May be some costs to ABS who appeal i.e. legal representation but difficult to quantify.	FTT costs £38K in first year & running costs per case £3,500. Appeals (cases): 0-10 per year.	Page 9-30.
IPReg	To bear some non-monetised costs in the form of a one-off adjustment cost as a result of all aspects of the proposal and ongoing costs related to the operation of compensation arrangements.	No.	Page 9-30.
Non-compliant businesses	Would have to pay all investigation costs as a result of the proposal and may be subject to financial penalties.	No.	Page 9-30.
Consumers of legal services	Any increase in regulatory costs will ultimately be passed on to the consumers of legal services in the form of higher prices.	No.	Page 9-30.

Total Costs	£25,000 per annum (average)
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Group Affected	Description of Benefits	Can the impact be quantified?	Detail				
Consumers of legal services	Increased consumer protection as a result of the implementation of compensation arrangements and a credible deterrent to non-compliance through IPReg having increased disciplinary powers. Any reductions in regulatory costs might be passed on to the consumers of legal services through lower prices. Society may benefit if the outcomes as a result of the proposal are seen as fairer.	No.	Page 9-30.				
Compliant businesses	Would no longer pay investigation costs.	No.	Page 9-30.				
<table border="1" style="width: 100%;"> <tr> <td data-bbox="231 790 470 884">Total Benefits</td> <td data-bbox="470 790 922 884">NQ per annum</td> <td colspan="2"></td> </tr> </table>				Total Benefits	NQ per annum		
Total Benefits	NQ per annum						
<p>What other measures were considered and why were they not pursued?</p> <p>The do nothing option was considered but rejected as IPReg would be unable to introduce compensation arrangements for Registrants, which would create a situation where clients receiving the same type of advice would be less protected if they sought advice from a Registrant, as opposed to an ABS. Also, IPReg would have far more limited powers to investigate cases and discipline Registrants than ABS. For ABS and Registrants alike, it would not be possible for IPReg to recover the costs of investigations from the subject of the investigation, meaning that the cost would have to be spread across the regulated community. IPReg would also not be able to intervene into a Registrant firm, should client money be in jeopardy.</p>							
<p>Are there any key assumptions or risks?</p> <p>Key Assumptions, Risks & Uncertainties</p> <p>For proposals related to the implementation of compensation arrangements, it is assumed that the appropriate level of contributions to the arrangements can be calculated and collected. It is assumed the proposal would have no impact on the compliance of regulated businesses, the monitoring and enforcement activities of IPReg, on the rate of ABS take up, or on the justice system. It is assumed that focussing investigation costs on guilty parties would have no impact on the ability of IPReg to collect.</p>							

ANALYTICAL ANNEX

1. Introduction

Background

- 1.1. These proposals concern the effectiveness of the regulation of legal services providers, and in particular the need to ensure adequate consumer protection. This is to be achieved through the creation of (i) a consistent regulatory framework between Alternative Business Structures (**ABS**) and non-ABS (or traditional firms) - such that all firms are subject to the same, appropriate, level of regulation - and (ii) a credible deterrent to non-compliance. The credible deterrent is established through regulators of legal services having appropriate disciplinary powers. Any disparity in the powers of regulators creates the risk of regulatory arbitrage - where the decision as to the type of firm and services to be offered are driven by the desire for the lowest level of regulation – and can also distort competition.
- 1.2. Firms registered under the Copyright, Design and Patents Act 1998 (**CDPA**) and Trade Marks Act 1994 (**TMA**) and regulated by CIPA and ITMA in their capacity as ARs are referred to in this impact assessment as “Registrants” or “non-ABS”. Many existing Registrants are dual-authorized (i.e. under both the CDPA and TMA). This is why it is important not just for CIPA and ITMA to have consistent powers but also for them to act jointly in relation to compensation arrangements as IPReg.
- 1.3. The following table sets out the number of individual Registrants (patent and trade mark attorneys) and firms over the past three years:

Year	Individuals		Firms
	Patent Attorney	Trade Mark Attorneys	Patent and Trade Mark Attorneys
2010	1,798	772	161
2011	1,687	620	181
2012	1,745	639	184
2013	1,827	675	195

- 1.4. Of the current firms, approximately 40 firms are licensable, of which 9 are large or medium-sized, which provides some indication of the number of ABS in the first year, assuming CIPA and ITMA (with delegated authority to IPReg) are designated as LAs. Therefore, the powers in respect of registrants would be

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exercisable in relation to approximately 155 firms, and those in respect of ABS, would be exercisable in respect of around 40 firms.

Problem under consideration

1.5. The problem is that in some instances the Legal Services Act 2007 (LSA) and the other legislation under which IPReg operates does not provide them with sufficient powers to ensure they would be able to regulate appropriately ABS and non-ABS; indeed, such inadequacies undermine the effectiveness of IPReg as a regulator and expose consumers to unnecessary risk. There are ten proposed changes, which are discussed in turn below. These changes fall under three headings (see A, B, C below).

A) The ability of IPReg to recover costs and request information from firms and regulated persons, and grant rights of appeal

Proposal 1: Giving IPReg the power to require registered persons to provide information and documentation

1.6. The proposal is to grant the power to require information and documentation, to make regulations in respect of such requests and to enforce such requests through the High Court in respect of Registrants, their managers and employees etc. It would also provide a consistent regulatory framework with IPReg's powers as an LA.

Proposal 2: Giving IPReg the power to give rights of appeal to persons subject to decisions in respect of Registrants

1.7. The proposal is to give IPReg the power to give rights of appeal to persons subject to decisions in respect of Registrants.

1.8. It is LSB policy that there is a single appellate body, namely the General Regulatory Chamber of the First Tier Tribunal (**FTT**), to hear appeals to all ABS decisions.¹ IPReg has adopted this policy as it does not also have its own existing, independent appellate body. Other options were considered, such as the High Court or the Solicitors Disciplinary Tribunal, but rejected as it would not achieve consistency and would therefore be less efficient.

B) The ability of IPReg to make rules in respect of the manner in which firms are run and arrangements to protect firms' clients

¹ LSB consultation document: Alternative business structures: appeal arrangement; August 2010. http://www.legalservicesboard.org.uk/news_publications/latest_news/pdf/20110509_absappeals_decision_doc.pdf

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Proposal 3: Giving IPReg the power to require Registrants to appoint a Head of Legal Practice (HOLP) and a Head of Finance and Administration (HOFA)

1.9. The proposal is for IPReg to be granted the power to require Registrants to appoint a HOLP and HOFA. Such provisions should be consistent with the provisions in respect of ABS in order to maximise regulatory efficiency.

Proposal 4: Giving IPReg the power to make rules regarding the treatment of client money and the keeping of accounts in respect of such money

1.10. The proposal is to grant IPReg the power to make rules regarding the treatment of client money and the keeping of accounts in respect of such money. The proposal poses a simple, low cost requirement to keep money in a separate account to which access is restricted.

Proposal 5: Giving IPReg the power to make indemnification and compensation arrangements for registered persons and Licensed Bodies

1.11. It is proposed that IPReg be given the power to make indemnification and compensation arrangements for Registrants and ABS, that it is permitted to have the same arrangements for ABS and Registrants and that they (CIPA and ITMA acting together as IPReg) further be permitted jointly to establish common compensation arrangements.

C) The powers of IPReg to investigate and discipline firms and individuals, and intervene into firms

Proposal 6: Giving IPReg the power to make rules to recover the costs of investigations

1.12. The proposal is to allow IPReg to recover the costs of investigations into ABS and Registrants or their managers, employees, the Head of Legal Practice, the Head of Finance and Administration, or any person holding an interest (direct or indirect) or material interest in the licensed body. Such costs would be recoverable from the ABS, Registrant, manager, employee, HOLP, HOFA or material interest holder, as appropriate.

Proposal 7: Giving IPReg the power to issue public notices, warnings or reprimands

1.13. The proposal is to grant IPReg, when acting in the capacity either as ARs or LAs, the power to issue public notices, warnings or reprimands.

Proposal 8: Giving IPReg the power to impose financial penalties

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1.14. It is proposed to grant to IPReg the power to impose financial penalties and to make rules in respect of these. The maximum amount of such fines should be set in order for there to be clarity in the regulated community. It seems sensible for this maximum to be in line with the maximum fining power IPReg would have as a LA at the point of designation (i.e., the amounts set under rules made under s 95(3) of the LSA, currently this is £250 million for a licensed body and £50 million for a manager or employee of a licensed body. Given the need for consistency, it would seem appropriate for the powers of IPReg to reflect as much as possible the powers that they would have as a LA.

Proposal 9: Giving IPReg the power to disqualify individuals from holding certain roles

1.15. The proposal is to give IPReg the power to disqualify individuals from holding the role of HOLP, HOFA, manager or employee of a Registrant and to make regulations in respect of disqualifications consistent with the provisions of the LSA.

Proposal 10: Giving IPReg intervention powers in respect of Registrants

1.16. It is proposed to grant IPReg, as an AR, intervention powers in respect of Registrants in the same form as Schedule 14 of the LSA. It is not expected that this power would be exercised frequently.

2. Policy objectives

2.1. The main policy objective is to ensure that consumers of all legal service providers benefit from an equal level of protection regardless of the provider of those services (i.e., the type of firm) and the basis upon which they are being provided. Further objectives include:

- the overall regulatory framework for legal services should be efficient;
- that regulatory powers should have a firm statutory basis (where necessary);
- those who are the cause of regulatory expenditure, e.g., investigations or interventions, should bear the cost of that expenditure.

2.2. These should provide clarity and assurance for those being regulated and their clients.

3. Affected stakeholder groups, organisations and sectors

3.1. The following individuals/sectors are likely to be affected by these proposals:

- The LSB: to devote some resource to the s 69 order consultation;
- CIPA and ITMA: the proposed changes relate to their regulatory powers;

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- IPReg: should be more efficient in carrying out its regulatory role;
- Potential ABS businesses: the proposals relate to the way in which ABS would be regulated, and interaction between ABS and their regulators;
- Registrants: IPReg would have more extensive regulatory powers;
- Consumers of legal services: the proposals relate to the levels of consumer protection provided, and the regulatory costs, which may ultimately be passed on to consumers;
- Justice system: Registrants will have a right of appeal to the FTT, which may result in a (very small) increase in appeals to the FTT.

4. Options

Option O: Base case (do nothing)

- 4.1. Under the do nothing option, IPReg would be unable to introduce compensation arrangements for Registrants, which would create a situation where clients receiving the same type of advice would be less protected if they sought advice from a Registrant, as opposed to an ABS. Also, IPReg would have far more limited powers to investigate cases and discipline Registrants than ABS. For ABS and Registrants alike, it would not be possible for IPReg to recover the costs of investigations from the subject of the investigation, meaning that the cost would have to be spread across the regulated community. IPReg would also not be able to intervene into a Registrant firm, should client money be in jeopardy.
- 4.2. Because the do nothing option is compared against itself, its costs and benefits are necessarily zero, as is its Net Present Value (NPV).

Option 1: S 69 order: Modification of functions of IPReg

- 4.3. This impact assessment covers ten proposals that would be brought into effect by the s 69 order; the impacts have been analysed below. The proposed changes need legislation to be effective and the only mechanism considered feasible is implementation of the changes through a s 69 order. Exactly the same considerations apply for CIPA and ITMA.

A) The ability of IPReg to request information from firms and regulated persons, and grant rights of appeal

Proposal 1: Giving IPReg the power to require registered persons to provide information and documentation

Costs

Registrants

- 4.4. Firms may incur costs in the provision of such information. However, the proposals include the power for IPReg to pay the reasonable costs of any person providing information and, which is expected to be limited to the costs of printing and photocopying. The overall costs for the length of staff time taken to gather information; best estimates could be based on a scenario of 5% of all firms per year (or less than 10 firms per year) required to provide information. The number of hours taken could range from 2 hours for 1 firm to 20 hours for 10 firms. Based on the cost of staff at £100 per hour (for one or more staff members to collect the information and provide it to IPReg) annual costs to IPReg could equate to a lower estimate of £200 to a top estimate of £2,000.
- 4.5. Firms that refused to comply with such requests may incur costs, should IPReg choose to enforce their request through the High Court. However, this would be limited to cases of non-compliance.

Overall cost of the proposal

- 4.6. The overall costs of this proposal would be minimal for photocopying and printing as firms would absorb this cost into the day-to-day running costs of their firm. It is also difficult to estimate as it would vary depending on the investigation how much information would be needed.

Benefits

IPReg

- 4.7. Being able to request information from firms based on a statutory power, backed up by the right to enforce such orders through the High Court, should increase the effectiveness of IPReg and reduce the cost of obtaining the information in terms of wasted management time.

Assumptions

- 4.8. Assumed that allowing IPReg to obtain information and documentation would have no impact on the number of cases for which information or documentation was required or the overall amount of investigation work done per case. This is a strong assumption.
- 4.9. Assumed that there would be no change in the number of appeals following investigation rulings arising out of requests for information, and hence no

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impact on the justice system.

Risks

4.10. The key risks are that responding to significant requests for information puts a financial strain on firms. This is being mitigated by the inclusion of a provision that in certain circumstances those subject to requests will be able to recover such costs.

Proposal 2: Giving IPReg the power to give rights of appeal to persons subject to decisions in respect of Registrants

Costs

Registrants

4.11. Registrants making appeals will have to bear the costs of any appeals to an external body. Registrants and individuals/bodies will have a right of appeal to IPReg before they exercise their external right of appeal. Because of this, the likelihood of an external appeal is reduced. Firms may choose to be legally represented, which would result in additional costs.

IPReg

4.12. IPReg would have to bear the costs of defending appeals and, depending on the appellate body, may not be able to recover the costs from unsuccessful appellants; in this event the costs would be borne by the regulated community, since all costs are, of necessity, passed on to those whom IPReg regulates.

4.13. The number of appeals is unknown. However, the level of such appeals is expected to be very low.

4.14. IPReg may also have to bear the additional operating costs of the appellate body including daily fees for panel members plus administrative support and training costs. For example, estimated total costs in the first year of the FTT of the GRC are £38,000 with unit running costs per case of £3,500. Appeals are likely to be in lower quartile of 0-10 per year, so overall monetised cost to IPReg will not be significant. Any additional IT and telephony costs are expected to be negligible.

Consumers of legal services

4.15. All regulatory costs will ultimately be passed on to the consumers of legal services in the form of higher fees. This includes the extra costs associated with any appeals in relation to IPReg's decisions. These costs are expected to

be small.

Overall cost of the proposal

4.16. The overall costs of this proposal would mostly impact on IPReg who will bear the costs of the FTT in hearing appeals. There might also be some monetised costs to individual ABS who appeal (e.g. legal and representative costs) but this is difficult to quantify.

4.17. Since designation in 2011, both CLC and SRA have had no appeals to their licensing decisions referred to their appellate body. As the CLC and SRA are considerably bigger organisations regulating far more firms than IPReg, it is expected that IPReg will have the lower end of the estimate for appeals going to the FTT, particularly within the first one to two years of operation as an LA.

Benefits

Registrants

4.18. Those subject to decisions will significantly benefit from being able to appeal to an independent external body. A credible appeals mechanism is also a key part of a strong and effective regulatory framework, which enhances public confidence in the regulatory system and produces consumer welfare benefits.

IPReg

4.19. The experience of defending appeals may have the effect of improving the process of decision making, in the event that any decision was successfully appealed. In any event, any external review of IPReg's decision making may help to identify areas for improvement.

Consumers of legal services

4.20. Ultimately, the proposal should lead to a better regulatory system – of which a credible appeal mechanism is an essential part. This is likely to enhance consumer confidence in the legal services market.

Assumptions

4.21. Assumed that if the number of appeals is higher than anticipated, the costs of the appeal mechanism will increase. However, a higher number of appeals are likely to occur in proportion to a higher number of licensed businesses, so the cost of the appeal mechanism as an element of the licence fee for individual

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businesses is not likely to increase significantly. The average cost of the appeal mechanism as part the licence fee for individual businesses is correlated to the marginal increase in the volume of appeals.

4.22. Assumed that for the purposes of estimating costs, each appeal will require a two day hearing on average.

Risks

4.23. The key risk is that the existence of an external right of appeal will encourage firms and individuals to make appeals, even where there are no substantive grounds for appeal. This risk is reduced by virtue of the fact that the appellant will have to bear the cost of the appeal, although they may be able to recover such costs if they are successful. Alternatively, the costs of appeals may act as an inhibitor to appeals. This risk would be mitigated by IPReg nominating an appellate body whose rules and operating procedures seek to limit cost wherever possible.

B) The ability of IPReg to make rules in respect of the manner in which firms are run and arrangements to protect firms' clients

Proposal 3: Giving IPReg the power to require Registrants to appoint a Head of Legal Practice (HOLP) and a Head of Finance and Administration (HOFA)

Costs

Registrants

4.24. Compared to the base case, Registrants will have to bear the cost of appointing a HOLP and HOFA and having them approved by IPReg; it is anticipated that the cost of handling each application will be set at £200.

4.25. Taking into account the fact those firms may appoint an existing manager/employee, together with the fact that firms already have to take responsibility for compliance and have the necessary arrangements for reporting in place, it is anticipated that the cost to firms will be negligible.

4.26. There may be additional costs of improving systems and controls to enable the HOLP and HOFA to comply with their obligations, including reporting obligations. However, firms should already have such controls in place.

IPReg

4.27. IPReg will have to bear the cost of approving HOLPs and HOFAs. Therefore, there will be both start up and running costs. Numbers of HOLPs and HOFAs to be approved will reflect the size of the regulated community. IPReg will seek

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to reduce the operational costs by introducing HOLPs and HOFAs for Registrants after a transitional period, enabling the work to be conducted over a period of time.

4.28. In circumstances where there is a high level of non-compliance in terms of firms nominating HOLPs and HOFAs, the costs of making the necessary decisions on each application will escalate and will include costs of enforcement.

Consumers

4.29. Any regulatory costs imposed on businesses would ultimately be passed on to consumers. Any additional costs related to the appointment and approval of a HOLP and HOFA may therefore be passed on.

Overall cost of the proposal

4.30. The overall costs of this proposal would be minimal or negligible. In simple terms, designating someone as a HOLP or HOFA should cost very little, unless someone has to be brought in from outside because no one has the necessary capacity to undertake the role.

Benefits

Registrants

4.31. The roles of the HOLP and HOFA are intended to ensure that firms are run effectively with systems and controls to ensure compliance with statutory and regulatory obligations, and any breaches of those obligations are reported to IPReg. Appointing a HOLP and HOFA may therefore improve standards of compliance and the process of approving nominees for these roles may help to identify concerns within firms.

IPReg

4.32. IPReg will benefit from:

- being able to approve the HOLP and HOFA, who play a key role in ensuring compliance;
- having the HOLP and HOFA as points of contact on compliance generally (the HOLP) and finance and administration (the HOFA);
- the additional information provided by HOLPs and HOFAs as a result of their reporting obligations.
 - All of the above should improve IPReg's effectiveness.

Consumers

4.33. Consumers may benefit from improved standards of compliance.

Assumptions

4.34. Assumed that the majority of firms will not need to make external appointments but will nominate persons as HOLPs and HOFAs from within their firm. This is a strong assumption.

4.35. Assumed that levels of non-compliance will be low, given the previous regulatory history of Registrants. This is a strong assumption.

Risks

4.36. The following risks have been identified:

- Smaller firms are unable to bear the cost of having a HOLP and HOFA. This risk is being mitigated by the fact that the HOLP and HOFA can be the same person and that person can be, e.g., the two partners in a two-partner firm;
- Significant levels of non-disclosure on the applications for approval and/or failure to co-operate with requests to nominate HOLPs and HOFAs lead to a higher than expected workload for IPReg. Historically, IPReg has experienced high levels of compliance (e.g., in the years that returns have been submitted to IPReg (2010-2012), IPReg has annually had significantly in excess of 95% of firms that are compliant with their obligation and 98% of all firms responded to a 2012 survey that requested information concerning their practices). In addition, IPReg have, to date, no evidence of non-disclosure by firms and their managers.

Proposal 4: Giving IPReg the power to make rules regarding the treatment of client money and the keeping of accounts in respect of such money

Costs

Registrants

4.37. Registrants would have to separate client money (including money held on account of fees and disbursements) from the firm's own money. Generally, levels of client money held are low and these usually relate to fees and disbursements held on account. Based on information held by IPReg, the amount of client money held is likely to peak at £25,000, the average holding being in the region of £10,000-£15,000. It should be noted that this average level of holding of client money is due to the nature of intellectual property legal work (related to patents, designs and registered trademarks).

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4.38. IPReg does not intend to introduce complex rules regarding client money, but merely to ensure that it is properly segregated and capable of being identified, monitored and reported upon. Registrants should already be in a position to identify monies belonging to clients, although the obligation to segregate the money would be new. Since this primarily involves setting up a new bank account, and paying bank charges for the new account it is not expected that this will be a significant cost to firms.

Consumers

4.39. Any regulatory costs imposed on businesses would ultimately be passed on to consumers. Any additional costs related to the segregation of client money may therefore be passed on, although as stated above, such costs are likely to be very low.

Overall costs of the proposal

4.40. The overall costs of this proposal would be minimal or negligible. There is a possibility that bank charges could apply as a handling fee per transaction, however, IPReg firms hold very low levels of client money and most transactions would be online, therefore incurring minimal to no transaction fees.

Benefits

IPReg

4.41. IPReg may benefit from improved reporting with regard to monies held on behalf of clients.

Consumers

4.42. Segregated client money should provide a greater level of protection to clients in circumstances, for example, where a firm experiences financial difficulties.

Assumptions

4.43. Assumed that firms are able easily to segregate client money, i.e., that generally client money is ring-fenced.

Risks

4.44. The key risk is that the introduction of new provisions regarding client money leads to the discovery of mishandling of client money by some firms, or alternatively puts financial strain on firms. Whilst this risk is acknowledged, it would be in the public interest that such matters were brought to light and addressed.

Proposal 5: Giving IPReg the power to make indemnification and compensation arrangements for registered persons and Licensed Bodies

Costs

Registrants

- 4.45. Compared to the base case, Registrants would be required to participate in compensation arrangements and may be required to contribute to the cost of the compensation arrangements. In the first year of operation, IPReg will bear the costs, but in subsequent years these may be passed on to ABS and Registrants.
- 4.46. In the first year of operation IPReg intends to purchase an insurance policy, which will compensate clients in the event that they suffer loss that is not protected by firms' professional indemnity insurance.

ABS

- 4.47. Compared to the base case, it is unlikely that there will be any additional cost for ABS, given that they are required, under the LSA, to contribute to compensation arrangements. Indeed, having the same arrangements for both types of firm should reduce the costs.

IPReg

- 4.48. IPReg will bear the cost of the compensation arrangements in the first year, and the policy is expected to cost in the region of £30,000-£35,000. IPReg will also bear the cost of operating the compensation arrangements in terms of staff time, although this is likely to be limited, since the number of claims in any year is expected to be very low. This is based on the fact that IPReg has never had a case in which a firm has appropriated client money, which would give rise to a claim under the compensation arrangements.

Consumers of legal services

- 4.49. Any regulatory costs imposed on businesses would ultimately be passed on to consumers. Any additional costs related to compensation arrangements may therefore be passed on.

Overall costs of the proposal

- 4.50. The overall costs of this proposal would be minimal; the likelihood of a claim is very low there has been no case or cases in the past of dishonesty. IPReg

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firms also hold low levels of client money. Historically IPReg have experienced a low level of complaints.

Benefits

Registrants

4.51. Compared to the base case, Registrants may indirectly benefit from the assurance provided to consumers that they will be protected by compensation arrangements compared to firms that are not regulated.

ABS

4.52. ABS may benefit from the economies of scale, through having common arrangements for both types of firm and for firms authorised by both CIPA and ITMA.

IPReg

4.53. IPReg will have the benefit of being able to establish common compensation arrangements for all firms, which should increase their efficiency.

Consumers of legal services

4.54. Although it is anticipated that the number of instances in which clients will need to claim under the compensation arrangements will be small, and those that do claim will be remunerated for losses suffered that are covered by the arrangements.

Assumptions

4.55. Assumed that the circumstances giving rise to a need to claim under compensation arrangements will not increase merely by virtue of the existence of such arrangements. This is a strong assumption.

4.56. Assumed that the cost of compensation arrangements will be reduced by having common arrangements for both types of firm and for firms authorised by CIPA and ITMA (acting together as IPReg).

Risks

4.57. The key risks are as follows:

- legal challenge against an attempt to impose the same compensation arrangements on all types of firm and/or firms regulated by IPReg. This risk is being mitigated by provisions in the s 69 order that expressly permit such action;

MoJ Assessment of Impacts Template for measure not requiring RRC clearance

- compensation arrangements for Registrants represent too great a cost for smaller Registrants, discouraging the establishment of small firms or causing them to experience financial difficulties. This risk is to be mitigated in the first year by IPReg bearing the cost of the compensation arrangements and, in subsequent years, by the allocation of the costs of compensation arrangements on a pro rata basis by reference to the size of the firm.

C) The powers of IPReg to investigate and discipline firms and individuals, and intervene into firms including IPReg to recover costs arising from investigations leading to disciplinary action

Proposal 6: Giving IPReg the power to make rules to recover the costs of investigations

Costs

ABS/Registrants

- 4.58. Compared to the base case, any firm (or their HOLP, HOFA, manager, employee, owner, depending on the subject of the investigation) found in breach of regulations following an investigation would be worse off, as they would be liable for the costs of the investigation. It is assumed that any additional investigation costs would form part of the sanction and be ordered to be paid in addition to the relevant sanction. With regard to investigations leading to disciplinary action, the total expenditure on disciplinary matters in 2012 was £73,000 and in 2013 was £50,000. However, the size of the regulated community needs to be borne in mind together with the fact that this community has always demonstrated high levels of compliance. Given this fact, the instances of investigations have been, and are expected to continue to be, very low and less than 5% of all firms. The number of disciplinary cases in 2011 and 2012 was less than 5% of the total number of firms.
- 4.59. Firms would face additional costs associated with investigations if they are found to be non-compliant, which in practice would be equivalent to an order for costs in addition to any financial penalty or other sanction being levied for non-compliance. In response to these potential additional costs all firms may therefore face additional costs associated with ensuring they have adequate compliance systems in place.

IPReg

- 4.60. It is assumed that the proposal would have no impact on the ability of IPReg to

MoJ Assessment of Impacts Template for measure not requiring RRC clearance

collect income to fund investigations. It is also assumed that the amount of investigation work undertaken would remain unchanged. The costs of implementing the order are expected to be negligible, except in the case where a party failed to pay the costs for which they were liable, in which case the matter would need to be pursued through the courts.

Consumers of legal services

4.61. Any regulatory costs imposed on businesses would ultimately be passed on to consumers. Any additional costs related to ensuring compliance with the relevant regulations as a result of the proposal may therefore be passed on to the consumers of legal services.

Overall cost of the proposal

4.62. The overall costs of this proposal would be minimal or negligible as eventually the cost of investigation recovered will result in a fall in the regulatory levy on firms – therefore it is essentially a distributional issue of costs. The only new costs will in practice be those associated with collecting the money from the firms where they fail to pay. Evidence from general compliance suggests that this cost will be low.

Benefits

ABS/Registrants

4.63. The proposal would mean compliant firms would bear no costs associated with investigations when a firm is found to be non-compliant and this results in some form of disciplinary action. Currently, all firms would share investigation costs through practising fees. Based on the assumptions made, the proposal should lead to a reduction in the practising fee, or at least ensure that the practising fee does not rise as a result of investigations, which would benefit all firms.

IPReg

4.64. The proposal would mean that IPReg would be able to recover costs from those who were the cause of the expenditure. Being unable to recover such costs from those responsible for the costs might act as a disincentive, since the costs would otherwise be borne by the entire regulated community. This proposal removes such a disincentive. Moreover, the ability to recover such costs as a debt due facilitates collection of these costs.

Consumers of legal services

MoJ Assessment of Impacts Template for measure not requiring RRC clearance

- 4.65. The consumers of legal services would benefit from the proposal if it provides an additional deterrent effect and thus improves the compliance of firms. Consumers would benefit directly in cases where non-compliance was deterred, but more generally consumers may benefit from increased confidence in the regulatory system.
- 4.66. Further, any net reduction in costs for firms as a result of this proposal may benefit the consumers of legal services if these costs were to be passed on by firms. However, the overall impact on firms, and therefore consumers, is unclear.

Assumptions

- 4.67. Assumed that allowing IPReg to recover the cost of investigations from guilty parties would have no impact on the overall amount of investigation work done per case, and no change on the number of investigations undertaken. This is a strong assumption.
- 4.68. Assumed that the proposal would have no impact on investigation outcomes, particularly that the probability of being found in breach of the regulations is unchanged. This is a strong assumption.
- 4.69. Assumed that there would be no change in the number of appeals following investigation rulings, and hence no impact on the justice system.
- 4.70. Assumed that the proposal would have no impact on any punishments given for non-compliance, i.e., that punishments would be determined separately to any order in respect of investigation costs that would also be imposed.
- 4.71. Assumed that the proposal would have no impact on the ability of IPReg to collect income to fund investigations. There is a risk that this may be more difficult if collection is focused on non-compliant firms.

Risks

- 4.72. The following risks have been identified:
- it may be more difficult to collect the costs of investigation if collection is focused on non-compliant firms;
 - IPReg may set practising fees on the basis that it will be able to recover the costs of investigations from those subject to the investigations but then be unable to do so, meaning that such money has to be recovered from all firms by levy on an unplanned basis. This risk can be mitigated by assessing the success of other regulators in recovering such costs and making realistic assumptions about the likelihood of recovering all costs;

MoJ Assessment of Impacts Template for measure not requiring RRC clearance

- firms take evasive action to avoid paying the costs of investigations.

Proposal 7: Giving IPReg the power to issue public notices, warnings or reprimands

Costs

ABS and Registrants

- 4.73. Compared to the base case, any firm found to be in breach of regulations may be worse off in the sense that they could be publicly censured. This may not result in direct costs to them, but could result in a loss of business, although this would be as a result of a matter that it would be in the public interest to disclose (e.g. wrongdoing at the firm).
- 4.74. The frequency with which such public censure would occur is unknown, as it depends on the disciplinary action of IPReg (IPReg), and on the compliance of firms. The amount of disciplinary activity is assumed not to be influenced by the power publicly to censure, and hence there is no expected change to overall levels of disciplinary action.
- 4.75. Firms may face additional costs associated with public censure if they are found to be non-compliant, which in practice would be equivalent to the costs associated with handling public relations due to the censure and any loss of business of increase in complaints. In response to these potential additional costs all firms may therefore face additional costs associated with ensuring they have adequate compliance systems in place.

IPReg

- 4.76. It is assumed that the amount of disciplinary action undertaken would remain unchanged and therefore that the costs of such disciplinary action will not rise significantly. It is also anticipated that the number of disciplinary cases will be low (i.e. less than 5% of the total number of firms) and therefore the overall cost to IPReg both in terms of direct costs and staff time will be low.

Consumers of legal services

- 4.77. Any regulatory costs imposed on businesses would ultimately be passed on to consumers. Any additional costs related to ensuring compliance with the relevant regulations as a result of the proposal may therefore be passed on to the consumers of legal services.

Overall costs of the proposal

MoJ Assessment of Impacts Template for measure not requiring RRC clearance

4.78. The overall costs of this proposal would be minimal or negligible and does not represent a redistribution of existing costs. Whilst the likelihood of exercising this power is low, it is still in the public interest to disclose this information.

Benefits

Consumers of legal services

4.79. The consumers of legal services would benefit from the proposal if it provides an additional deterrent effect and thus improves the compliance of firms.

Consumers would benefit directly in cases where non-compliance was deterred, but more generally consumers may be better informed regarding those firms whose standard of compliance may be lower than those of their peers, and benefit from increased confidence in the regulatory system.

4.80. Further, any net reduction in costs for firms as a result of this proposal may benefit the consumers of legal services if these costs were to be passed on by firms. However, the overall impact on firms, and therefore consumers, is unclear.

Assumptions

4.81. Assumed that allowing IPReg to censure publicly those subject to disciplinary action and warn the general public would have no impact on the overall amount of work done per disciplinary case, and no change on the level of disciplinary action undertaken. This is a strong assumption.

4.82. Assumed that the proposal would have no impact on the outcome of disciplinary action, particularly that the probability of being found in breach of the regulations is unchanged. This is a strong assumption.

4.83. Assumed that there would be no change in the number of appeals following disciplinary action, and hence no impact on the justice system.

Risk

4.84. The key risk identified is that public confidence is undermined in legal services by the publication of disciplinary action. However, given that the likely number of disciplinary cases is low this risk is very unlikely to crystallise.

Proposal 8: Giving IPReg the power to impose financial penalties

Costs

IPReg

4.85. IPReg would bear the costs of any disciplinary action against firms and

MoJ Assessment of Impacts Template for measure not requiring RRC clearance

regulated persons; although IPReg is seeking to recover the costs of investigations.

Consumers

4.86. Any regulatory costs imposed on businesses would ultimately be passed on to consumers. Any additional costs related to the improving standards of compliance in order to prevent financial sanctions may therefore be passed on, in the relatively small number of cases where disciplinary action was taken.

Overall costs of the proposal

4.87. The overall costs of this proposal would be minimal or negligible, IPReg already have arrangements for bringing and hearing disciplinary cases and therefore the anticipated costs of operation and implementation are not significant. As the costs of any disciplinary action against firms and regulated persons incurred by IPReg would be recovered through the costs of investigations. The main cost, therefore, would be on those subject to financial penalties.

Benefits

IPReg

4.88. IPReg needs to create a credible deterrent to non-compliance. The imposition of financial penalties that reflect the severity of the non-compliance is one of the key elements in the creation of that credible deterrent. This proposal would significantly increase the effectiveness of IPReg.

ABS

4.89. In the absence of the proposal, those seeking to set up firms may decide to establish themselves as Registrants rather than seek to exploit the opportunities for new business structures offered by ABS, given that IPReg would have more limited disciplinary powers. This proposal should therefore ensure that ABS and Registrants are subject to the same disciplinary powers. This should help to achieve a level playing field and would represent a benefit for ABS.

Consumers

4.90. The consumers of legal services would benefit from the proposal if it provides an additional deterrent effect and thus improves the compliance of firms. Consumers would benefit directly in cases where non-compliance was

MoJ Assessment of Impacts Template for measure not requiring RRC clearance

deterred, but more generally consumers may be better informed regarding those firms whose standard of compliance may be lower than those of their peers, and benefit from increased confidence in the regulatory system. Moreover, publication of such fines will better inform consumers in their choice of legal services provider.

Assumptions

4.91. Assumed that allowing IPReg to impose financial penalties would have limited impact on the overall number of disciplinary cases and would not significantly increase the overall amount of work involved, or costs of, such disciplinary proceedings. This is a strong assumption.

Risks

4.92. The key risk is that IPReg's costs significantly increase as a result of their enhanced disciplinary powers, both in terms of the costs of implementation and of operation. IPReg already have arrangements for bringing and hearing disciplinary cases and therefore the anticipated costs of operation and implementation are not significant and may in fact be negligible.

4.93. Although there is a general level of compliance i.e. deducing from the number of complaints IPReg have the smallest number of complaints among the existing ARs, there is a high compliance for CPD returns and a low number of disciplinary cases year on year and very low levels of appeals (assumption since 2012 is 0-5). However, the powers gained under this proposal will ensure a strong incentive for firms to be compliant.

Proposal 9: Giving IPReg the power to disqualify individuals from holding certain roles

Costs

Registrants

4.94. In the event that any person holding one of the above roles in a Registrant was subject to proceedings to disqualify them from holding that role, the firm may incur costs in defending the person in such proceedings. Moreover, should the person be disqualified there may be a financial impact in terms of restructuring the firm, appointing a successor or even closing the firm (should a number of managers be disqualified).

Person subject to disqualification

MoJ Assessment of Impacts Template for measure not requiring RRC clearance

4.95. The person subject to the proceedings may also incur defence costs. In the event that they were disqualified there could be very significant consequences, since they would be prevented from holding the role in the future, and therefore earning a salary by holding such a role, unless and until the disqualification were lifted.

IPReg

4.96. IPReg would bear the costs of disqualification proceedings, which may be significant. However, where this is linked to an investigation, the cost of the related investigation would be recoverable. Given the regulatory history of patent and trade mark attorneys in the last three years (complaints against firms have been extremely low, as have the instances in which it has been necessary to bring disciplinary action) it is believed that the benefits outweigh the costs of this proposal. The importance of the power to disqualify lies not in the potential numbers of disqualifications but rather in the deterrent effect of having the power, and exercising it when that is justifiable in the public interest.

Consumers

4.97. Any regulatory costs imposed on businesses would ultimately be passed on to consumers. Any additional costs related to the improving standards of compliance in order to avoid disciplinary action that may lead to disqualification may therefore be passed on.

Overall costs of the proposal

4.98. The overall costs of this proposal would be minimal or negligible; IPReg would bear the costs of disqualification proceedings, however, where this is linked to an investigation, the cost of the related investigation would be recoverable.

Benefits

IPReg

4.99. As stated above, for regulation to be effective, regulators need to create a credible deterrent to non-compliance. In addition, they need to be able to prevent persons from participating within (holding particular roles in) regulated firms who are not fit to do so. Being able to disqualify persons from holding particular roles is not only one of the key elements in the creation of that credible deterrent, but it also prevents further risks to the public from such persons continuing to hold those roles. This proposal would therefore significantly increase the effectiveness of IPReg.

MoJ Assessment of Impacts Template for measure not requiring RRC clearance

Consumers

- 4.100. Consumers would directly benefit in that those who were not fit to hold roles in firms could be removed from firms and would be unable to hold those roles until the disqualification was lifted. In addition, IPReg would make public details of disqualifications, reducing the risk that any attempt to continue to hold such roles without approval would be successful.

Assumptions

- 4.101. Assumed that giving IPReg the power to disqualify individuals would not significantly change the number of disciplinary proceedings undertaken by IPReg. This is a strong assumption.

Risks

- 4.102. The key risk is that disqualifications do not achieve the desired effect of preventing those who are not fit to hold certain roles from doing so. This is only likely to happen in circumstances where the power granted is not exercised, meaning that it is only of theoretical regulatory benefit. An additional risk is that the power to disqualify is over-used, making persons reluctant, e.g., to hold the role of HOLP or HOFA. Both risks are felt to be low, in the first case because IPReg intend to use the powers against individuals in tandem with their powers against firms to achieve a credible deterrent against non-compliance, and in the second case because the arrangements in place to hear disciplinary cases mean that individuals will be protected against unjustified attempts to disqualify and, moreover, there will be a right of appeal against disqualification decisions.

Proposal 10: Giving IPReg intervention powers in respect of Registrants

Costs

Registrants

- 4.103. IPReg would have the right to recover their costs from the firm/sole practitioner that was subject to the intervention. Thus any firm/sole practitioner subject to an intervention would have their own costs, e.g., to challenge any proposed intervention and to comply with the intervention, and would also, potentially, bear the costs of IPReg.

IPReg

- 4.104. IPReg would have to have procedures and staff to support interventions. In

MoJ Assessment of Impacts Template for measure not requiring RRC clearance

terms of establishing procedures for interventions, these costs are not thought to be significant and will be covered by the day to day operating costs of IPReg. The greater cost will be incurred in conducting an intervention. The SRA, which has the power to exercise interventions, identify the main costs as being:

- internal staff;
- intervention agents' fees;
- archiving, repatriation and ultimate destruction of closed client files.

In 2011 and 2012 the SRA's costs of interventions were as follows:

Year	Number of interventions	Total cost	Average cost per intervention (£)
2011	62	£1,970,000	£31,774
2012	37	£1,160,000	£31,351

Source: SRA Consultation Paper "Exercising the statutory power to pay the cost of firm interventions from the Compensation Fund".

4.105. However, comparisons with the SRA may lead to an overestimation of the costs per intervention, since the cost per intervention is determined by the complexity of the matter, including the number of client files and levels of client money held. Essentially, the larger and more complex the firm is the greater the costs. Patent and trade mark attorney firms tend to hold low levels of client money (the average being £10,000-15,000). Therefore, interventions are thought to be significantly less likely and less costly.

4.106. As set out above, IPReg would, under the proposal, have the power to recover these costs from the sole practitioner/firm that was the subject of the intervention but there may be circumstances in which this might not be possible. The remaining cost would be borne by IPReg. However, it is expected that the number of interventions annually is likely to be nil or extremely small.

Consumers

4.107. In the event that IPReg had to pass on the cost of one or more interventions to Registrants and ABS, this cost would be expected, in turn, to be passed on to clients of firms, although given the anticipated number of interventions, it is very unlikely that any costs will arise to be passed on.

Overall costs of the proposal

4.108. The overall costs of this proposal would be minimal or negligible; IPReg do

MoJ Assessment of Impacts Template for measure not requiring RRC clearance

not have any past experience of interventions and the probability of an intervention is very low.

Benefits

Registrants

4.109. The fact that IPReg would have the power to intervene into a sole practitioner or firm may encourage firms to ensure that they are run properly with appropriate financial management.

IPReg

4.110. The effectiveness of IPReg in managing risks to clients and consumers generally, will be significantly improved. This is not because it is anticipated that there will be significant levels of interventions, but rather that clients are most in jeopardy in the circumstances where an intervention is required, and will be protected. Clients can be exposed in the following ways:

- the client matter may need to be transferred to another firm at a critical juncture;
- defaults on the client account may need to be rectified and there may be a significant risk of further loss of client money;
- client files, and therefore client confidentiality, may be at risk due to non-payment of archiving fees.

In such circumstances, interventions can be highly beneficial for clients.

Assumptions

4.111. Assumed that the size of the regulated community (firms and sole practitioners) will not increase significantly.

4.112. Assumed that the type of bodies regulated by IPReg and the nature of the work conducted will not change significantly.

Risks

4.113. The key risk is that IPReg do not have the necessary experience to conduct interventions, jeopardising the effectiveness of the intervention. Assuming that this proposal is accepted, IPReg will be putting in place arrangements for conducting interventions, building on the experience of the SRA.

5. Enforcement and implementation

5.1. The commencement provisions in Article 2 of the Order set out the timing for the

MoJ Assessment of Impacts Template for measure not requiring RRC clearance

coming into force of the different provisions.

5.2. As the proposed entail changes to legislation that modifies some of the functions of IPReg, together operating as IPReg, it is not envisaged that a post-implementation review of the changes will take place. However, the LSB, as the oversight regulator of the legal services market will, through its information collection from ARs and LAs, be reviewing regulatory arrangements and functions of IPReg on an ongoing basis.

6. Summary

6.1. The preferred option is Option 1; to modify the functions of IPReg, as both an AR and LA, by a s 69 order containing the proposals set out above. The net costs are not believed to be significant, given the number of firms impacted and the low costs to them and to IPReg.

6.2. The benefits are common enhanced consumer protection and improved efficiency and effectiveness in the regulatory system e.g. all clients of firms authorised by IPReg having access to the compensation arrangements, not just clients of ABS. To do otherwise seems unfair and arbitrary:

- all people subject to the same types of decisions, having the same rights of appeal and, those who cause cost being the ones who bear the cost, rather than other firms who are otherwise compliant with IPReg's regulations.

6.3. The benefits set out above are expected to outweigh any such costs incurred by the introduction of the proposals under the proposed s69 order.