



Summary of Decision

The following table is a high level summary of the decision of the Legal Services Board. It is not a formal part of the decision notice.

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| Purpose of notice |
| To grant an application from the Intellectual Property Regulation Board (IPReg) to approve alterations to its regulatory arrangements in respect of powers to suspend individual registrants who fail to comply with their administrative requirements. |
| Alterations that are being approved by this decision |
| <p>The proposed changes will grant powers to the Registrar of IPReg to suspend the registration of an individual attorney registrant in certain defined circumstances, which are set out in the main body of the notice. The circumstances include failure to pay a practising certificate fee within three months of the renewal date and failure to comply with continuing professional development requirements.</p> <p>The main purpose of the changes is to harmonise IPReg's rules with regards to suspension powers applied to individual registrants and registered bodies.</p> |

Decision notice

Issued by the Legal Services Board under Part 3 of Schedule 4 to the Legal Services Act 2007

The Intellectual Property Regulation Board's application for approval of changes to its regulatory arrangements in respect of powers to suspend individual registrants

The Legal Services Board (LSB) has granted an application from the Intellectual Property Regulation Board (IPReg) to approve alterations to the regulatory arrangements in respect of powers to suspend individual registrants. The Chartered Institute of Patent Attorneys and the Chartered Institute of Trade Mark Attorneys are the approved regulators and the IPReg is the regulatory arm to which they have both delegated their regulatory functions.

This decision notice sets out the decision taken, including a brief description of the changes. The notes at the end of this notice explain the statutory basis for the decision. The chronology for the LSB's handling of this application is set out at the end of this decision notice.

Proposed changes

1. The alterations amend IPReg's Continuous Professional Development (CPD) Regulations 2013 and the Patent Attorney and Trademark Attorney and Qualification and Registration Regulations 2009. The purpose of the changes is to provide for the power to suspend registered individuals who fail to:
 - Pay the practising certificate fee within three months of the original renewal date, having received a letter two months after the renewal date warning that suspension will follow in one month if the fee remains unpaid.
 - Comply with CPD requirements.
 - Provide evidence of completion of CPD to the satisfaction of the Registrar of IPReg.
 - Hold the requisite Professional Indemnity Insurance (PII) as prescribed in IPReg's Code of Conduct.
 - Provide evidence of compliant PII to the satisfaction of the Registrar of IPReg.
2. There are further supplementary and consequential changes concerning the length and lifting of suspensions. For example, a suspension will be lifted upon payment of a practising fee within three months of the suspension taking effect; and where an attorney fails to comply with CPD or PII requirements and/or fails to provide evidence of compliance, the registrar may suspend the attorney's registration for up to three months.
3. IPReg's application explains that the rule changes are designed to achieve the following desired outcomes:
 - Consistency with regards suspension powers applied to both registered bodies and individual registrants.

- In order to allow IPReg to act proportionality for those who fail to comply with administrative requirements, before using the ultimate sanction of removal from the register.
- Increase consumer protection by providing IPReg with the ability to suspend (and continue to investigate if necessary) the registrant from the register for non-payment of practising certificate fee, rather than removing them altogether, thus the registrant losing PII cover. This will allow a consumer to make a claim against an insured attorney rather than an uninsured one.

Key issues considered in the assessment of the application

4. The LSB consider it sensible for IPReg to harmonise suspension arrangements between individual registrants and registered bodies. We noted the concerns highlighted in the application about the period of time that an attorney can remain on the register before they can be suspended. We welcome IPReg's commitment to review this as part of its work on how to improve the effectiveness of the operation and maintenance of the registers. No further issues were raised by the LSB in its assessment.

Decision

5. The LSB has considered the IPReg's application against the criteria in paragraph 25(3) of Schedule 4 to the Legal Services Act 2007 (the Act). It considers that there is no reason to refuse this application and accordingly, the application is granted.
6. The Annex to this decision notice contains the specific amendments to the IPReg's regulatory arrangements approved by the LSB.

Chronology

- The LSB confirmed receipt of an application from the IPReg on 24 January 2017.
- The 28 day decision period for considering the application ends on 21 February 2017.
- This decision notice is effective from 8 February 2018.
- The decision notice will be published on our website by 12 February 2018.

Neil Buckley, Chief Executive of the Legal Services Board
8 February 2018

Notes:

1. The LSB is required by Part 3 of Schedule 4 to the Act to review and grant or refuse applications by approved regulators to make alterations to their regulatory arrangements.
2. Paragraph 25(3) of Schedule 4 to the Act explains that the LSB may refuse an application setting out a proposed change to the regulatory arrangements only if it is satisfied that:
 - (a) granting the application would be prejudicial to the regulatory objectives
 - (b) granting the application would be contrary to any provision made by or by virtue of this Act or any other enactment or would result in any of the designation requirements ceasing to be satisfied in relation to the approved regulator
 - (c) granting the application would be contrary to the public interest
 - (d) the alteration would enable the approved regulator to authorise persons to carry on activities which are reserved legal activities in relation to which it is not a relevant approved regulator
 - (e) the alteration would enable the approved regulator to license persons under Part 5 [of the Act] to carry on activities which are reserved legal activities in relation to which it is not a licensing authority, or
 - (f) the alteration has been or is likely to be made otherwise than in accordance with the procedures (whether statutory or otherwise) which apply in relation to the making of the alteration.
3. The designation requirements referred to in paragraph 2(b) above are set out in paragraph 25(4) of Schedule 4 to the Act and are:
 - (a) a requirement that the approved regulator has appropriate internal governance arrangements in place
 - (b) a requirement that the applicant is competent, and has sufficient resources to perform the role of approved regulator in relation to the reserved legal activities in respect of which it is designated, and
 - (c) the requirements set out in paragraphs 13(2)(c) to (e) of Schedule 4, namely that the proposed regulatory arrangements are appropriate, comply with the requirements in respect of resolution of regulatory conflict (imposed by sections 52 and 54 of the Act) and comply with the requirements in relation to the handling of complaints (imposed by sections 112 and 145 of the Act).
4. In accordance with paragraphs 20(1) and 23(3) of Schedule 4 to the Act, the LSB has made rules¹ about the manner and form in which applications to alter regulatory arrangements must be made. Amongst other things, the rules highlight the applicant's obligations under section 28 of the Act to have regard to the Better Regulation Principles. They also require applicants to provide information about each proposed change and details of the consultation undertaken.
5. If the LSB is not satisfied that one or more of the criteria for refusal are met, then it must approve the application in whole, or the parts of it that can be approved.

¹ Rules for Rule Change Applications – Version 2 (November 2010)

Patent Attorney and Trade Mark Attorney Qualification and Registration Regulations 2009

Proposed amended Regulations:

Regulation 3 – Requirements [...]

- 3.4 A registered patent or trade mark attorney when applying to remain on one or both of the Registers in accordance with the Qualification and Registration Regulations must include an annual declaration of compliance with the CPD requirement of Regulation 3.1 and of 3.2 if applicable using the form prescribed in Schedule 1 hereto (or equivalent) and an undertaking to submit if required details of the CPD undertaken in the calendar year preceding the application [...]

Regulation 6 – Continuing Professional Development

- 6.1 PRB and TRB, separately or together as IPReg, shall after consultation with CIPA and ITMA make regulations governing such appropriate education and training as may be required as part of the continuing professional development of a person applying to remain on the Patent Attorney Register or the Trade Mark Attorney Register, respectively.
- 6.2 PRB and TRB, separately or together as IPReg, shall have the power for due cause to waive any or all of the requirements of Regulation 6.1 in whole or in part or to extend the time within which a registered patent or trade mark attorney must complete any of such requirements.
- 6.3 Instances of non-compliance with regulations made under Regulation 3.4, 6.1 and/or 7.2 which are not exempted by Regulation 6.2 hereof shall be referred to the Joint Disciplinary Panel established under the CIPA and ITMA Rules of Disciplinary Procedure be considered by the Registrar who may suspend the registrant from the register for a period of up to three months.
- 6.4 If a registrant's name is suspended from the register under Regulation 6.3, the suspension will be lifted upon completion of the required CPD, the grant of an exemption under Regulation 6.2 and/or receipt of requested evidence.
- 6.5 If a registrant's name is suspended from the register under Regulation 6.3, and the required CPD is not completed and/or the requested evidence is not received within three months of the first day of the Registrant's suspension from the register, the Registrar shall refer the registrant to the Joint Disciplinary Panel established under the CIPA and ITMA Rules of Disciplinary Procedure.
- 6.6 If a registrant is referred to the Joint Disciplinary Panel under Regulation 6.5, the registrant's name shall remain suspended from the register until any disciplinary proceedings are concluded.

Regulation 7 – Renewal of Registration

7.1 ~~Unless subject to a direction under Regulation 9.1, a person who continues to qualify for registration under Regulation 4 and satisfies the continuing professional development requirements of any rules made under Regulation 6~~ A person shall be entitled to remain on the relevant register:

- (a) Upon payment of the fee for renewal of registration prescribed in accordance with Regulation 12;
- (b) If he can provide to the satisfaction of the Registrar, evidence that he has complied with Rule 17 of the Rules of Conduct for Patent Attorneys, Trade Mark Attorneys and Other Regulated Persons concerning Professional Indemnity Insurance; and
- (c) If he satisfies the continuing professional development requirements of any rules made under Regulation 6

7.2 The relevant Registrar may, for the purpose of establishing that a person fulfils the requirements of Regulation 6, 4.2(d) or 4.3(d), require that the person submit evidence to that effect and may require such further particulars as are considered necessary. [...]

7.4 If a registered patent attorney or registered trade mark attorney fails to:

- (a) pay the fee prescribed for renewal of registration in accordance with Regulation 12 within two months from the day on which it becomes payable (the Renewal Date);
- (b) provide the relevant Registrar with the evidence requested in accordance with Regulations 7.2 within one month of being asked to do so; or
- (c) provide evidence to the satisfaction of the Registrar that he has appropriate Professional Indemnity Insurance in place in accordance with Rule 17 of the Rules of Conduct for Patent Attorneys, Trade Mark Attorneys and other Regulated Persons,

the Registrar concerned shall notify the attorney at his business address (as shown in the Register) that his name will be suspended for a period of three months or removed from the relevant register within one month, unless the required fee is paid and/or the requested evidence is supplied.

7.5 ~~Within a period of six months from the Renewal Date, the name of a person removed from one or both of the Registers under Regulation 7.4 shall be restored on payment of the unpaid fees and/or provision of satisfactory requested evidence, together with such further late payment fee as may be prescribed in accordance with Regulation 12.~~

If a registrant's name is suspended from the register under Regulation 7.4, the suspension will be lifted upon payment of the unpaid fees and/or provision of satisfactory requested evidence, together with such further late payment fee as may be prescribed in accordance with Regulation 12.

- (a) If the payment required and/or information requested is not provided within three months of the first day of the Registrant's suspension from the register, the Registrar shall remove the Registrant's name from the register.**

7.6 Restoration of the name of a person removed from one or both of the Registers under Regulation 7.4, 7.5 or 7.5(a) after a period of six months from the Renewal date shall be at the discretion of IPReg which may impose such further requirements as it considers appropriate which may include providing evidence of compliance with some or all of the initial registration requirements of Regulation 4.2 or 4.3. [...]

Continuing Professional Development Regulations 2013

Proposed amended Regulations:

- 5.3 Any non-compliance with these Regulations which is not satisfactorily addressed under Regulation 4 will be referred to the Joint Disciplinary Panel established under the CIPA and ITMA Rules of Disciplinary Procedure and may result in the removal of the registered patent or trade mark attorney from the relevant Register considered by the Registrar who may suspend the registered patent or trademark attorney from the register for a period of up to three months.**
- (a) If a registrant's name is suspended from the register under Regulation 5.3, the suspension will be lifted upon completion of the required CPD and/or receipt of requested evidence.**
 - (b) If the non-compliance is not rectified within three months of the first day of the Registrant's suspension from the register, the Registrar shall refer the registrant to the Joint Disciplinary Panel established under the CIPA and ITMA Rules of Disciplinary Procedure.**
 - (c) If the registrant is referred to the Joint Disciplinary Panel under Regulation 5.3(b), the registrant's name shall remain suspended from the register until any disciplinary proceedings are concluded.**

