



Summary of Decision

This document provides a summary of the decision of the Legal Services Board (“LSB”).

It is not and should not be taken as a formal part of the LSB’s decision notice under the Legal Services Act 2007 (“the Act”).

Purpose of notice and decision

The purpose of this summary document is to provide a high level and accessible summary of the LSB’s decision. Readers are recommended to read the formal decision notice itself for further detail.

The LSB’s decision is to grant in full the application from the Intellectual Property Regulation Board (‘IPReg’) to make changes to its regulatory arrangements that will:

- reduce the grace period before an attorney is suspended for non-payment of fees
- allow IPReg to serve correspondence and notices on its regulated community by email.

The LSB concluded that the changes do not meet the refusal criteria in the Act. Consequently, the LSB considers that there is no reason to refuse this application.

Decision notice

The Intellectual Property Regulation Board application to make changes to its regulatory arrangements in order to reduce the notice period for suspension for non-payment of fees and to allow for service of documents by email

1. The Legal Services Board (“**LSB**”) has granted an application from the Intellectual Property Regulation Board (“**IPReg**”) for approval of changes to its regulatory arrangements in order to reduce the notice period for suspension for non-payment of fees and to allow for service of documents by email.
2. This decision notice sets out the decision taken, including a brief description of the changes.
3. The LSB is required by Part 3 of Schedule 4 to the Legal Services Act 2007 (“**the Act**”) to review and grant or refuse applications by approved regulators to make alterations to their regulatory arrangements. The Chartered Institute of Patent Attorneys and Chartered Institute of Trade Mark Attorneys as the joint approved regulators have delegated their regulatory functions to IPReg. The notes at page 4 of this notice explain the statutory basis for the decision.
4. The chronology for the LSB’s handling of this application is also set out at the end of this decision notice.

Background and Proposed Changes

Suspensions

5. IPReg keeps a register¹ of people it regulates and has the power to make regulations to suspend individual attorneys from its register. On 8 February 2018 the LSB approved amendments to IPReg’s regulatory arrangements which provided it with the power to suspend registered individual attorneys in a range of circumstances, including for failure to pay the practising certificate fee within three months of the renewal date. IPReg say that during the 2018 re-registration process, it appeared that some firms and individual attorneys were consciously delaying completion of registration in order to take advantage of a three-month grace period before any regulatory action would be taken.
6. To mitigate this, IPReg proposes changes to its *Patent Attorney and Trade Mark Attorney Qualification and Registration Regulations 2009*, by amending regulation 7.4(a) to reduce the period for payment of the practising fee from two months after the renewal date to one month after the renewal date (with suspension to occur one month thereafter). IPReg explained that the primary purpose for the change is to provide an additional incentive for prompt compliance of payment of the practising fee, thus enhancing consumer protection.

¹ The register includes registered trade mark attorneys, registered patent attorneys and registered bodies.

Service of documents and notice

7. IPReg's current arrangements allow for service of documents and notices on individual attorneys and entities by personal service or post (with proof of postage). It says that during the 2018 renewal process considerable IPReg time and costs were incurred to send notices relating to non-compliance, warning of suspension, suspension and removal from the register.
8. It therefore proposes a change to its *Rules of Conduct for Patent Attorneys, Trade Mark Attorneys and other Regulated Persons* at rule 3, Service of Documents, so that any notice or other document can also be notified in writing by email, as well as by personal service or by signed for 1st class post (or equivalent). Both the *Patent Attorney and Trade Mark Attorney Qualification and Registration Regulations 2009* (regulation 7.4) and the *Disciplinary Procedure Rules 2015* (rule 13) are also amended to achieve consistency with rule 3 as amended.
9. IPReg explained in its application that allowing for service of such documents by email will save considerable time and expenditure and will also ensure that all of IPReg's regulatory arrangements are consistent in relation to service of documents.

Assessment of the application

10. During the course of IPReg's consultation process a concern was raised that the amendments relating to suspension are premature and heavy-handed. The LSB recognises that IPReg's power to suspend attorneys is discretionary and will remain so under the amended rules. IPReg has explained that it recognises there may be some circumstances where it would be disproportionate to suspend individual attorneys for non-payment of practising fees.

Decision

11. The LSB has considered IPReg's application against the refusal criteria in paragraph 25(3) of Schedule 4 to the Act. It considers that there is no reason to refuse this application and accordingly, the application is granted.
12. **Annex A** to this decision notice contains the regulatory arrangements approved by the LSB.

Chronology

- IPReg sent an application to the LSB on 7 November 2018
- The LSB confirmed receipt of an application from IPReg on 8 November 2018
- This decision notice is effective from 3 December 2018.
- This decision notice will be published on our website on 5 December 2018.

Neil Buckley, Chief Executive

**Acting under delegated authority granted by the Board of the Legal Services Board
3 December 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 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 rules² 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.

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

Annex A

Proposed amendments to Regulations to reduce length of time to renew registration

NB. Proposed amendments are highlighted in red text

Patent Attorney and Trade Mark Attorney Qualification and Registration Regulations 2009

Regulation 7 – Renewal of Registration

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- 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 **one month** from the day on which it becomes payable (the Renewal Date);
 - (b) provide the relevant Registrar with the evidence requested in accordance with Regulation 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 in accordance with Rule 3 of the Rules of Conduct for Patent Attorneys, Trade Mark Attorneys and other Regulated Persons** 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.

Proposed amendments to Regulations in relation to service of documents

The Rules of Conduct for Patent Attorneys, Trade Mark Attorneys and other Regulated Persons

Rule 3 – Service of Documents

Any notice or other document required by or for the purposes of these Rules or any other regulatory arrangements made by IPReg must be notified to the regulated person in writing. IPReg's notification in writing may be:

- **by any form of electronic communication normally used for business purposes such as email;**
- **given to them personally; or**
- **sent by mail to their last known address by Royal Mail "Signed for 1st Class" (or equivalent product), in which case the document is treated**

as received on the second calendar day (not including bank holidays)
after posting.

Disciplinary Procedure Rules 2015

Rule 13 – Service of Documents

- 13.1 Any Complaint or other document required to be served under these Rules shall be served in accordance with Rule 3 of the Rules of Conduct for Patent Attorneys, Trade Mark Attorneys and other Regulated Persons.