



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:

- Give IPReg’s Registrar the power to refuse removal of an attorney from the register if it is considered such removal poses a potential risk to clients, to the protection of client money or to any investigative process.
- Prevents any person adversely affected by the Registrar’s decision in relation to voluntary removal, to appeal.

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 prevent registration lapses.

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 prevent registration lapses.
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 5 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

5. IPReg keeps a register¹ of people it regulates. IPReg’s current regulatory arrangements do not allow it to prevent individual attorneys from removing themselves from the register, either voluntarily, or as a result of a failure to pay the practising fee. IPReg is seeking to amend its regulatory arrangements to allow the Registrar to prevent attorneys from removing their name from the register if such removal poses or may pose a risk to:
 - a. clients
 - b. the protection of client money or
 - c. any IPReg investigative process.
6. IPReg explained in its application that the reasons for the change are to enhance public protection and to achieve greater consistency in its regulatory arrangements. The changes will assist public protection by allowing the Registrar to stop registered persons from removing their names from the register and thus IPReg’s regulatory jurisdiction. With regards to consistency, the changes will align register controls for individual registrants with existing provisions for registered bodies.

Proposed Changes

7. The relevant regulatory arrangements being amended are the *Patent Attorney and Trade Mark Attorney Qualification and Registration Regulations 2009* and *IPReg Appeals Rules*.

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

8. There are two key changes to the *Patent Attorney and Trade Mark Attorney Qualification and Registration Regulations 2009*. Rule 7.5 is being amended to give the Registrar the ability to suspend from the register an attorney who has failed to pay fees, rather than remove them automatically, if removal will give rise to a risk to clients or IPReg investigations. The Registrar must notify the attorney if they are so suspended. New rules 9.4 to 9.6 will provide that an attorney may apply at any time to have their name removed from the register. The Registrar may refuse or defer the application if removal will give rise to any of the risks described in the rules.
9. Further consequential amendments are made to the *IPReg Appeals Rules* to reformat existing wording into a sub-rule at 2.1(a), and to set out at 2.1(b) that a person adversely affected by a decision of the Registrar in relation to their application for removal (from the register), cannot invoke the appeal procedure under the Appeals Rules.

Key issues considered in the assessment of the application

10. The LSB recognises that the changes are to address a gap in public protection. The LSB also acknowledges that the amendments achieve consistency with IPReg's regulatory arrangements in respect of registered bodies.
11. The LSB is satisfied that where decisions are made to stop registrants being removed from the register, such decisions will be communicated to those concerned in writing and will be supported by reasons.
12. It is noted that while there is no right of appeal within IPReg's Appeals Rules against decisions taken by the Registrar in relation to an individual registrant's application for voluntary removal from the register, such decisions can be challenged by way of judicial review. The LSB also noted IPReg's confirmation that it will produce guidance on the new regulations, to be published once the rules are implemented. It was clarified with IPReg in the assessment process, that it is individuals and not registered bodies that will be prevented, under revised rule 2.1, from invoking an appeal procedure against a decision of the Registrar in relation to Voluntary Removal.

Decision

13. 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.
14. **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 prevent registration lapses

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 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 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 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 **if they are satisfied that removal of the attorney's name from the register would not present a risk or potential risk to clients, to the protection of client money, or to any investigative process.**
 - (b) **If the Registrar concerned considers the attorney may present a risk of the type set out in Regulation 7.5(a), they shall notify the attorney that they**

remain suspended from the register until such time as the Registrar considers appropriate.

Regulation 9 – Removal of Entries from the Registers

- 9.1 Where IPReg has reached a decision in accordance with its Rules of Disciplinary Procedure that a registered patent attorney or a registered trade mark attorney has been guilty of misconduct or other material breach of any of its rules and regulations, it may direct that the entry for that person be removed from the relevant register, and may further direct that the entry for that person shall not be restored during such period as may be specified; and upon such a direction the Registrar concerned shall accordingly remove the whole entry for that person from the relevant register and the relevant Registrar shall not, except with the prior consent of IPReg, register the name of that person whilst the direction remains in effect.
- 9.2 IPReg shall maintain a Special Record containing the name and particulars of any person whose name has been removed from either of the Registers together with the reason for the removal and such other particulars as are considered appropriate.
- 9.3 The Special Record shall be freely available for public inspection at such times and in such manner as IPReg may direct.
- 9.4 A registered patent attorney or a registered trade mark attorney may apply to the Registrar at any time, to have their name removed from the relevant register.
- 9.5 If an application is made in accordance with Regulation 9.4, the Registrar concerned may take whatever steps are considered appropriate to satisfy themselves that removal of the attorney's name from the register would not present a risk or potential risk to clients, to the protection of client money, or to any investigative process.
- 9.6 If the Registrar concerned is satisfied that granting the application may present a risk of the type set out in Regulation 9.5, they may refuse the application or defer the making of a decision until such time as they consider appropriate.

IPReg Appeals Rules

Rule 2 – Form, timing and fees for appeals

- 2.1 Any person adversely affected by a decision of IPReg, PRB, TRB or the Registrar other than a decision:
- a) under the IPReg Disciplinary Procedure Rules; or
 - b) of the Registrar in relation to Voluntary Removal

may invoke the appeal procedure established by these Rules.