

## Rule change application cover sheet

Summary of proposed rule change
<p>IPReg currently affords potential exemptions to historically approved qualifications: the examinations provided by the Joint Examination Board (wound down 2010-12) and pre-2013 cohorts on courses provided by the universities of Bournemouth, Brunel, Manchester and Queen Mary London. It is proposed that an 18 month sunset clause is applied to these exemptions on the basis that the qualifications are aged (a minimum of 10 years old by the end of the sunset clause).</p> <p>As informed by an assessment of the potential impact upon equalities factors, individuals affected by the sunset clause who have been unable, due to extenuating circumstances, to apply for entry on to the register, would be afforded the opportunity for waiver of the sunset clause.</p> <p>The potential impact upon the written regulatory arrangements would be a minor amendment and addition to Schedule 3 of the <a href="#">IPReg Examination and Admission of Individuals to the Register Rules</a>.</p>

Rule change application checklist	(tick)
Contact details for individual submitting application	✓
Details of proposed alteration	✓
Tracked version of changes included	✓
Nature and effect of proposed alteration (explain existing arrangements, current arrangements and why proposed change is being made)	✓
Explain impact on the regulatory objectives	✓
Explain how the proposed changes align with Better Regulation Principles	✓
Explain desired outcome of the proposed alteration and plans to monitor and assess whether it has been achieved (include timeframe)	✓
Does the proposed alteration affect areas regulated by other approved regulators? If so, have you consulted them?	✓
Include intended implementation date of proposed alteration	✓
Full details of the consultation process (including responses and how you have addressed them)	✓
Accessibility checked	✓
Other relevant explanatory material	

## **IPReg Rule Change Application**

**Date 3 June 2021**

**Individual submitting the rule change application: Victoria Swan, [victoria.swan@ipreg.org.uk](mailto:victoria.swan@ipreg.org.uk)**

### **Details, Nature and Effect of the Proposal of introducing a Sunset Clause to Exemptions afforded to Historic Qualifications**

#### **Background – Historic Arrangements**

1.1 Historically, the Chartered Institute of Patent Attorneys (“CIPA”) and the Institute of Trade Mark Attorneys (now “CITMA”), acted together as the Joint Examination Board (JEB), setting and administering qualifying examinations for entry on to the attorney registers. The A Sherr, November 2002 Review, ‘Where Science Meets Law’, included a recommendation that the examinations should move away from the ambit of the professional bodies. Between 2010 and 2012 the examinations were phased out and the JEB was wound down, upon which transitional arrangements were made to continue to afford exemptions for those examinations.

1.2 To date, IPReg’s position has been that an examination/course, and any related exemption that was valid at the time an individual successfully passed it, would be honoured by the current accredited qualification agencies as continuing to afford that exemption. This rule change application would seek to provide an 18 month sunset clause to the transitional arrangements afforded to the JEB examinations and to end the continuing recognition of specified historic Intellectual Property foundation level qualifications obtained from the universities of Bournemouth, Brunel, Manchester, and Queen Mary University London prior to and including 2013 cohorts. This due to the risk to the effectiveness of the profession and consumer interest when relying upon aged qualifications observing that by the time the sunset clause is at an end the JEB examinations would be at least 10 years old and the specified historic courses would be at least 9 years old.

1.3 Accordingly, this application would seek to make a minor amendment and addition to Schedule 3 (see items 1.19 and 2) of the [Examination and Admission of Individuals to the Register Rules](#) to reflect introduction of a sunset clause.

#### **Admission to the Register – Current arrangements**

1.4 [Admission to the Register](#): the qualification and registration processes for entry to either attorney register are governed by the [Patent Attorney and Trade Mark Attorney Qualification and Registration Regulations 2009](#) (“the Regulations”). These involve passing specific qualifying education elements and completion of work experience, followed by a formal application for entry on to the relevant register.

1.5 [Qualifying Courses and Examinations](#): an individual must successfully complete one of the IPReg-accredited Foundation Certificate courses, or the Foundation Examinations. The universities of Bournemouth, Brunel, and Queen Mary London all offer Foundation Certificate courses for both the patent and trade mark attorney qualification pathways. The Patent Examination Board offers Foundation Examinations equivalent (4 examinations in total) for the patent attorney qualification

pathway. Manchester University provided an option up until 2013 and then withdrew from the attorney qualifying pathways. Brunel provided a particular iteration of its course up until that same year.

1.6 If seeking to qualify as a Registered Trade Mark Attorney an individual must then successfully complete the IPReg-accredited Professional Certificate course at Nottingham University. If seeking to qualify as a Patent Attorney an individual must then successfully complete the IPReg-accredited Final Examinations (4 examinations in total) provided by the Patent Examination Board.

1.7 The Foundation Certificate offers vary in duration (between 4 months full-time and 1 year part-time) according to the individual's student status, which university is being attended and any exemptions applicable to the individual's circumstances. The Nottingham Certificate course is typically 10 months in duration.

1.8 An individual may be potentially exempt from elements of those qualifying courses/examinations should they already hold particular qualifications. Whilst typically these potential exemptions are listed at Schedule 3 'Exemptions and Deemed Passes' of the [Examination and Admission of Individuals to the Register Rules](#) neither the Joint Examinations Board nor the Manchester University course are listed in the Schedule as providing potential exemptions.

1.9 The historic (2013 and prior cohorts) Bournemouth, Brunel, Queen Mary University London and Manchester courses currently have the potential to provide exemption from the Foundation Level Qualification and the historic JEB exams offer the same. Additionally, depending upon which JEB examinations an individual sat they may potentially be entitled to exemptions from the Patent Examination Board Final Examinations. An individual with particular historic JEB passes can also potentially be fast-tracked through the Nottingham Advanced Level Qualification course which would be 4 months in length

1.10 In practice, these historic qualifications were recognised as exemptions by the previous Executive by way of an informal, unwritten policy. IPReg understands that at least two of the universities reported that they had been advised that these transitional arrangements would last 6 years, however this was not prescribed in any regulations, rules, guidance or policy. This established practice was continued by the current Executive in the interests of fairness and consistency, but with the intention that it would be drawn to a close at an appropriate time. IPReg considers that this has now been reached to align the transitional arrangements consultation with the regulatory arrangements review timeframe, but not to be part of it. It considers it is appropriate to end the exemptions not least because, as is the case with the JEB examinations, the historically approved courses pre-date the [IPReg Accreditation Standards](#) .

1.11 This rule change application seeks to introduce an 18 month sunset clause so that at the end of that period, exemptions to these qualifying examinations/courses passed before specified cut-offs, would no longer normally apply. IPReg considers that the Registrar could waive this rule as a matter of discretion in the event of extenuating circumstances, as explained below.

1.12 Substantial experience: as at Regulations 4.2 and 4.3 of the [Patent Attorney and Trade Mark Attorney Qualification and Registration Regulations 2009](#) an individual must also have undertaken

at least two years' full-time practice in intellectual property with substantial experience of attorney work (defined) in the United Kingdom or elsewhere, supervised by a UK Registered Trade Mark Attorney or Patent Attorney (as relevant) or a solicitor or barrister who is engaged in or has substantial experience of trade mark/patent work in the UK. Alternatively, they must have completed not less than four years' unsupervised full-time practice in intellectual property including substantial experience of trade mark work. The [Competency Frameworks](#) gives an indication of what we expect could be demonstrated on admission to the register.

1.13 Applying on the basis of four years' unsupervised experience qualification is less common and usually applies to those who are "in-house" trainees in industry or acting as a legal adviser to their employer. In such cases, as IPReg is unable to verify the quality and level of the individual's work experience with a registered attorney or other regulated legal professional, we will usually require the individual to provide evidence of their experience using the [Competency Frameworks](#) as a basis against which to demonstrate their skills. We may ask an individual to provide a training diary in which they set out a summary of work undertaken and an indication of the training need addressed by successfully completing that work. Alternatively, they may prefer to map their work experience directly against the competencies in the relevant framework. The individual is not required to have achieved advanced level competency in all areas but should be able to demonstrate that the work they have undertaken shows they have practical experience across a broad range of core attorney work at an appropriate newly qualified level.

### **Going forward**

1.14 The 5 November 2020 meeting of the IPReg Board agreed to consult on providing a sunset clause to the continuing recognition of specified historic examinations and courses. IPReg undertook an 8 week [Sunset Clause Consultation](#) proposing to introduce an 18 month sunset clause to historic qualifications. CIPA and CITMA, and the qualification agencies, were provided with advance notice of the consultation going live. All were also expressly invited to partake in the consultation. Upon the consultation being published on the website these stakeholders were all signposted to it and the representative bodies also signposted their members. Despite this, only four responses were received: from CIPA, CITMA, an individual and Nottingham Law School (provider of the intensive advanced qualification course created specifically for accommodating the transitional arrangements).

1.15 A table setting out the points raised in each response and the corresponding IPReg policy position are set out at item 11. These were endorsed at the 18 March 2021 meeting of the Board. A draft application was shared with the LSB for review and their feedback informed the version of the rule change application made here, as approved by the 26 May 2021 meeting of the IPReg Education Working Group. If the rule change is approved, with the ending of the sunset clause neither the JEB examinations<sup>1</sup> nor the specified courses would be recognised as providing elements of the attorney qualification pathway. The 18-month timeframe allows for 6 months promotion of the 12 month period in which an individual potentially affected by this arrangement could complete a Final Level Qualification offer and/or complete their experience.

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<sup>1</sup> This would cover the JEB Common, Foundation and Advanced papers and any JEB letters conveying exemption.

1.16 The sunset clause would apply to those who took the historic qualifications and have not since applied for and become registered attorneys and the standard position would be that such qualifications would not be treated as exemptions to the current qualification pathway. IPReg considers that this should apply other than in two scenarios (items 1.17 and 1.18) where the Registrar or the relevant Regulatory Board may exercise a discretion, on the basis of the facts of the particular application, to recognise the historic qualifications.

1.17 We have recognised that for those who had previously been on the registers but who had since been removed and were seeking readmission on the basis of the historic examination pathway, the risk factors are different and these types of applications require careful analysis. We have determined that it would be appropriate for the Registrar to consider each application of this nature on a case by case basis, balancing factors such as the length of time the individual had been registered, the nature of their practice, the length of time out of active practice and the way they intend to practise going forward (e.g. in a supervised or non-supervised setting) and consider the risk profile of each applicant before making a decision on registration.

1.18 Secondly, it may be appropriate for the Registrar to exercise discretion in such cases should an individual had been unable to sit the final qualification(s), or gain the necessary experience, in the 18 month sunset clause period, due to extenuating circumstances which would mean strict observation of the rule would be unfair or disproportionate. This might occur where, for example, an individual obtained their qualifications but were not able to undertake the required practice element of the pathway immediately after the qualifications were gained. This may have been due to taking time out to care for children or because of the individual's own ill health. In such a scenario, and following a thorough risk assessment, it may be appropriate to exercise the discretion to allow entry to the register. Item 6 'Factors for Consideration by Registrar/Equalities Considerations' of this application provides guidance as to the types of circumstances in which the Registrar may consider entry to the register on the basis of the historic qualifications and reasoned decisions would be made on the basis of a balance of those factors. This will enable applicants or potential applicants to understand, both in cases of new admission and readmission, what circumstances can be taken into account when such an application is being considered, and what mitigations would need to be in place to allow the Registrar to be assured that an applicant may be safely admitted to the register. The emphasis in such circumstances is upon the individual providing sufficient evidence to demonstrate that the integrity of the register would not be put at risk.

### **Rule Change application**

1.19 Schedule 3 'Exemptions and Deemed Passes' [Examination and Admission of Individuals to the Register Rules](#) does not reference either the historic JEB qualifications or the Manchester University course as providing potential exemptions and the practice of doing so was a matter of unwritten policy. This established and inherited practice was continued by the current Executive in the interests of fairness and consistency, but with the intention that it would be drawn to a close at an appropriate time. The change to written regulatory arrangements will be de minimis (as with the exception of the Brunel elective model version of the LLM, Schedule 3 fails to reference the historic qualifications as providing potential exemptions) and so is limited to:

<b>Written regulatory arrangements – proposed amendments</b>
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Removal of the words from Schedule 3 'Exemptions and Deemed Passes' of the [Examination and Admission of Individuals to the Register Rules](#) "Brunel University Postgraduate Certificate in Intellectual Property with ~~elective module in International Patents Practice Management and (until September 2013) elective module in International Trade Mark Practice~~".

It is also proposed that a Note is added at the end of that Schedule:

"Note 3. Neither IPReg accredited Intellectual Property qualifications obtained from the universities of Bournemouth, Brunel, or Queen Mary University London prior to and including 2013 cohorts, nor the historic Joint Examination Board examinations prior to and including 2011 passes (or 2012 resits), will be ordinarily deemed equivalent to some of the requirements of the Qualifying Examinations".

1.20 The proposed amendment seeks to promote consumer protection by providing an effective profession, with those coming on to the register having obtained current qualifications which have been consistently assessed through accreditation against specified standards.

1.21 The proposed alteration provides neither addition nor removal of regulation for those on the register.

1.22 These proposed tracked changes are provided in the Examination and Admission of Individuals to the Register Rules which immediately follows at section 2.

1.23 Additionally, the fast-track version of the PCTMP offered by Nottingham would cease to be open to JEB candidates, typically remaining open only to solicitors.

## **2. Rules for the Examination and Admission of Individuals to the Registers of Patent and Trade Mark Attorneys 2011 – Proposed Tracked Changes to Schedule 2**

**Pursuant to Sections 185 and 184 respectively of the Legal Services Act 2007, the Patent Regulation Board of the Chartered Institute of Patent Attorneys and the Trade Mark Regulation Board of the Institute of Trade Mark Attorneys, working jointly together as the IP Regulation Board, now make the following rules pursuant to Regulations 4 and 5 of the Patent and Trade Mark Attorney Qualification and Registration Regulations [2009].**

### **1 Commencement**

1.1 These Rules came into force on 6 June 2011 and may be referred to with the short title: "Examination and Admission Rules 2011" (hereafter referred to as the Rules).

1.2 These Rules supersede all previous rules relating to the examination and admission of individuals to the Registers of Patent and Trade Mark Attorneys except as provided in Rule 8 below.

1.3 Nothing in these Rules is intended to vary, or shall have the effect of varying, the provision for recognition of European professional qualifications in accordance with the European Union (Recognition of Professional Qualifications) Regulations 2015 as amended by the Recognition of

Professional Qualifications (Amendment etc) (EU Exit) Regulations 2019 as amended, concerning applications for admission to the Registers of Patent and Trade Mark Attorneys.

## **2 Interpretation**

2.1 In these Rules, unless the context otherwise requires:

“2009 Regulations” means the Patent & Trade Mark Attorney Qualification and Registration Regulations 2009, and references to “2009 Regulation” are construed accordingly;

“CIPA” means the Chartered Institute of Patent Attorneys;

“ITMA” means the Institute of Trade Mark Attorneys;

“PRB” means the Patent Regulation Board of CIPA;

“1991 Regulations” means the Regulations for the Examinations of Patent Agents & Trade Mark Agents 1991 as amended and including, but not limited to, the June 2010 Transitional Provisions of the JEB;

“TRB” means the Trade Mark Regulation Board of ITMA;

“IPReg” means PRB and TRB working jointly together as the IP Regulation Board;

“JEB” means the Joint Examination Board representing CIPA and ITMA as constituted in September 2007;

“patent attorney register” means the register kept under section 275 of the Copyright Designs and Patents Act 1988 as amended by Section 185 of the Legal Services Act 2007;

“trade mark attorney register” means the register kept under section 83 of the Trade Marks Act 1994 as amended by Section 184 of the Legal Services Act 2007;

“the Registers” means the “patent attorney register” and the “trade mark attorney register”;

“Registrar” means a person appointed in accordance with the 2009 Regulations to maintain the patent attorney register or the trade mark attorney register.

## **3 Qualifying Examinations and Examination Agencies**

3.1 For the purposes of 2009 Regulation 4.2(b) and 4.3(b) (and subject to Rule 9 below) in relation to the admission of an individual to the patent attorney register or the trade mark attorney register, respectively, Qualifying Examinations consisting of Foundation level and Final level examinations (including any qualifying course which may be required in connection therewith) shall be those which:

(a) are managed and controlled by an Examination Agency; and

(b) have been determined by PRB and TRB (separately or together as IPReg) pursuant to 2009 Regulation 5.2 on the application of the relevant Examination Agency as meeting the requisite overall standard and general content.

- 3.2 An Examination Agency may be empowered and accredited as such for the management and control of either or both Foundation and Final level examinations pursuant to 2009 Regulation 5.1 and Rule 3.1 above.
- 3.3 The agencies empowered and accredited as Examination Agencies for the management and control of either or both Foundation and Final level examinations pursuant to 2009 Regulation 5.1 and Rule 3.1 above shall be those set out in Schedule 1 to these Rules subject to any amendment which may be issued from time to time.
- 3.4 Each Examination Agency shall publish in advance details of its Qualifying Examinations and any required qualifying courses including details of the syllabus, time and place and conduct of, the Qualifying Examinations and shall supply these details to IPReg for publication on the IPReg website.
- 3.5 A candidate applying to sit a Qualifying Examination (or any part thereof) shall provide the relevant Examination Agency with contact details including his or her full name and address (permanent or for correspondence) and satisfactory proof of his or her academic qualifications and, where applicable, a copy of any confirmation of any deemed pass issued under Rule 7 below, and such other pertinent information as the Examination Agency or the Registrar may require.
- 3.6 The Registrar may require a copy of any information supplied in connection with an application made under Rule 3.5 above.
- 3.7 Examination Agencies shall ordinarily hold Qualifying Examinations at least once annually.

#### **4 Requirements for Academic Qualification**

- 4.1 For the purposes of 2009 Regulation 4.2(a) and 4.3(a) (and subject to Rule 9 hereafter) the “necessary academic qualifications” shall be those set out in Schedule 2 to these Rules.

#### **5 Recognition of European Professional Qualifications**

- 5.1 Any application in accordance with 2009 Regulation 4.4 for consideration by the PRB or TRB of recognition of a European professional qualification shall be made in writing to the relevant Registrar giving such detailed information as may be required.

#### **6 Persons with Substantial Experience**

- 6.1 For the purpose of 2009 Regulation 4.2 (c) and 4.3 (c) “substantial experience” shall ordinarily mean the period ending immediately before the application for admission to one or both of the Registers.
- 6.2 The Registrar may require such evidence in whatever form the Registrar considers appropriate and reasonable of “substantial experience” and before exercising any discretion in determining when the period of “substantial experience” in Rule 6.1 ends.

#### **7 Exemptions and Deemed Passes**

- 7.1 With the agreement of PRB and/or TRB, an Examination Agency may establish a provision under which an individual is exempt from sitting or is deemed to have passed one or more of its Qualifying

Examinations or a part thereof as a result of passing another relevant examination as stipulated in Schedule 3 to these Rules.

7.2 Details of any provision made under Rule 7.1 above shall be supplied to IPReg for publication on the IPReg website.

7.3 Any amendments to Schedule 3 which may be made from time to time will be subject to sufficient advance notice so that intending candidates for a Qualifying Examination already on a course affected by such amendment can complete such course or pursue an alternative course.

## **8 Appeals**

8.1 Any appeal by a candidate against a decision of an Examination Agency (including an appeal relating to marks awarded in an examination carried out by such an Agency) shall be conducted by the Examination Agency in accordance with the appeal processes of such Agency.

8.2 Any appeal against any decision of IPReg, PRB, TRB or the Registrar under these Rules shall be submitted to IPReg within one month of the date of such decision and will be conducted in accordance with the IPReg Administrative Appeal Regulations.

## **9 Transitional Provisions**

9.1 In relation to 2009 Regulation 4 PRB, working together with TRB as IPReg, hereby recognises the courses and examinations conducted under the 1991 Regulations and the course and examination approved by CIPA and known as the Advanced Training for Qualifying Examination P6, provided by Queen Mary, University of London.

9.2 In relation to 2009 Regulation 4 TRB, working together with PRB as IPReg, hereby recognises the courses and examinations conducted under the 1991 Regulations and the course and examination approved by ITMA and known as the Registered Trade Mark Attorney Intensive Qualification Course, provided by Nottingham Trent University.

9.3 Pursuant to Rule 9.1 and 9.2 hereof, the exemptions and deemed passes available under the examinations conducted under the 1991 Regulations shall continue to be available until further notice.

9.4 No further amendment or addition to the 1991 Regulations recognised in this Rule 9 will be permitted except with the consent of PRB and/or TRB as appropriate.

## **10 Schedules and Power to Amend**

10.1 The Schedules below form part of these Rules and may be amended from time to time as necessary by the Registrar and without the need to seek re-approval of the Rules but the Registrar will notify CIPA and ITMA in advance of enactment of any changes to any Schedule and will publish details of such changes on the IPReg website.

**Schedule 1**  
**Examination Agencies**

At the date of commencement of these Rules the following are designated as Examination Agencies for the provision of one or both levels of Qualifying Examination in accordance with Rule 3.1 hereof:

<b>Name of Examination Agency</b>	<b>Qualifying Examination(s)</b>
Bournemouth University	Foundation level
Brunel University	Foundation level
The Patent Examination Board (PEB)	Foundation and Final level (for patent attorney qualification only)
Nottingham Law School Limited, Nottingham Trent University	Final level (for trade mark attorney qualification only)
Queen Mary, University of London	Foundation level

subject to any deletions or additions from time to time made pursuant to Rule 10 of these Rules.

## Schedule 2

### Necessary Academic Qualifications

Necessary academic qualifications are:

- a a degree conferred by a University or Higher Education Institution in the United Kingdom (UK), or by the Open University Validation Service, or a licence awarded by the University College of Buckingham before that College was granted University status;
- b a degree conferred by the Council for National Academic Awards before 1992;
- c a pass in the Legal Practice Course (England and Wales) or the Diploma in Professional Legal Practice (Scotland) or the Postgraduate Diploma in Professional Legal Education or Studies (Northern Ireland) or the Bar Final Examination; or
- d any other qualification, whether obtained in the UK or elsewhere, which the Examination Agency concerned will accept as providing a suitable basis for entry into the patent or trade mark professions; and

subject to any deletions or additions from time to time made pursuant to Rule 10 of these Rules.

### Schedule 3

#### Exemptions and Deemed Passes

Examination Agencies may provide for the following examinations or qualifications to be deemed equivalent to some of the requirements of part of their Qualifying Examinations. As a result individuals with these qualifications or having passed these examinations may be exempt from, or deemed to have passed, some of the Qualifying Examinations as published by the relevant Agency and detailed on the IPReg website.

Qualification/Examination
Law Degree (note 1)
Law Degree with an assessed IP option covering UK Intellectual Property Law (note 2)
Legal Practice Course (England and Wales) or Diploma in Professional Legal Practice (Scotland) or Post-Graduate Diploma In Professional Legal Education or Studies (Northern Ireland)
Bar Final Examination
Queen Mary, University of London Certificate in Intellectual Property (Pathway A or B)/MSc in Intellectual Property Law (Pathway B)
Bournemouth University Postgraduate Certificate/Postgraduate Diploma/LLM in Intellectual Property <del>with elective module in International Patents Practice Management and (until September 2013) elective module in International Trade Mark Practice Management</del>
Brunel University Postgraduate Certificate in Intellectual Property Law/LLM in Intellectual Property
European Qualifying Examination for European Patent Attorneys

Note 1. A law degree awarded by a UK Higher Education Institution, or a law qualification, such as the Common Professional Examination/Graduate Diploma in Law, recognised by the Solicitors Regulation Authority , the Law Society of Scotland or the Law Society of Northern Ireland for the purposes of practising as a solicitor in England and Wales, Scotland or in Northern Ireland, respectively. Where a test in Common Law is required to secure such recognition, such a test shall have been taken and passed.

Note 2. IPReg reserves the right to review the content of any IP option put forward to satisfy itself that both the breadth and depth of the materials studied and any assessment adequately cover the syllabus and content of the Qualifying Courses.

Note 3. Neither IPReg accredited Intellectual Property qualifications obtained from the universities of Bournemouth, Brunel, or Queen Mary University London prior to and including 2013 cohorts, nor the historic Joint Examination Board examinations prior to and including 2011 passes (or 2012 resits), will be ordinarily deemed equivalent to some of the requirements of the Qualifying Examinations.

Memorandum

Pursuant to regulation 10 and in consultation with CIPA and ITMA amendments have been made to Schedules 1, 2 and 3 (May 2014).

### **3. Impact on Regulatory Objectives**

#### 3.1 RO Protecting and promoting the public interest.

The introduction of a sunset clause would impact upon prospective registered attorneys who may have previously sought to rely upon aged examinations for entry on to the register. The intention is that new entrants on to the register(s) have current qualifications affording contemporaneous technical knowledge, know-how, and learning which reflects up-to-date law, sectoral developments and wider best practice. This to uphold the integrity of the register and effectiveness of the profession, in furtherance of both the interests of the public and consumer.

#### 3.2 RO Supporting the constitutional principle of the rule of law.

There is no impact on the constitutional principle of the rule of law.

#### 3.3 RO Improving access to justice.

There is no impact on access to justice.

#### 3.4 RO Protecting and promoting the interests of consumers.

The introduction of a sunset clause would impact upon prospective registered attorneys who may have previously sought to rely upon aged examinations for entry on to the register. The intention is that new entrants on to the register(s) have current qualifications contemporaneous technical knowledge, know-how, and learning which reflects up-to-date law, sectoral developments and wider best practice. This to uphold the integrity of the register and effectiveness of the profession, in furtherance of both the interests of the public and consumer.

There is no impact on how complaints are dealt with nor financial protection arrangements.

#### 3.5 RO Promoting competition in the provision of services.

There is no impact on competition in the provision of services.

There is no detrimental impact upon those already on the register. The sunset clause would apply to those who took the historic examinations or courses only and did not enter on to the register or practise as a registered attorney following qualification. A patent attorney (whether UK or European) with historic exemptions can still qualify as a trade mark attorney by taking just the Professional Certificate in Trade Mark Practice and a registered trade mark attorney with historic exemptions can still qualify as a patent attorney, by taking the Final Diploma examinations.

#### 3.6 RO Encouraging an independent, strong, diverse and effective legal profession.

It is considered that providing c10 years+ (by the end of the sunset clause), alongside timely promotion of the ending of transitional arrangements, affords, in typical circumstances, more than sufficient time for qualification as an attorney. However, IPReg agrees with the point made by both CITMA and CIPA regarding individual circumstances effectively preventing someone from seeking registration in a timely manner, and accordingly provides for Registrar discretion, upon evidenced application, to extend the 18 month sunset timeframe. In exercising this discretion, IPReg will observe that an individual may have a non-standard but equally valid pathway to registration which encompasses other life experiences that can legitimately bring value to their role as a registered

attorney. We respect that an individual's unique circumstances may have prevented them from or made it difficult to commence their career immediately after study, and believe that so long as the extent of any risk can be identified and mitigated, this should not preclude an individual from seeking registration on the basis of historic qualifications.

Please see item 6 regarding factors which might inform Registrar decision-making, in respect of both fitness to practise factors and the assessment of impact upon equality protected characteristics.

### 3.7 RO Increasing public understanding of the citizen's legal rights and duties.

There is no impact on public understanding of the citizen's legal rights and duties.

### 3.8 RO Promoting and maintaining adherence to the professional principles: act with independence and integrity, maintain proper standards of work, act in the best interests of their clients, [right of audience], affairs of clients kept confidential.

The introduction of a sunset clause would impact upon prospective registered attorneys who may previously have sought to rely upon aged examinations for entry on to the register. The intention is that new entrants on to the register(s) have current qualifications affording contemporaneous technical knowledge, know-how, and learning which reflects up-to-date law, sectoral developments and wider best practice. This to uphold the integrity of the register to those whom we are confident can maintain proper standards of work.

The change is not related to either of the reserved legal activities of rights of audience or right to conduct litigation.

## **4. Better Regulation Principles**

4.1 Proportionality: IPReg understands that the qualification agencies (universities) expected that the recognition of the historic examinations was to be for a period of six years. Aligning a consultation and rule change application on this issue, to the wider regulatory arrangements review was deemed appropriate and has extended the transitional arrangements to ten years, including the 18 month sunset clause.

4.2 IPReg does not consider that this has posed any risk to consumers given the safeguards already in place regarding entry to the registers. This includes the requirement to have "substantial experience" of patent / trade mark work as at Regulations 4.2(c) and 4.3(c) of the [Patent and Trade Mark Attorney Qualification and Registration Regulations](#) ("the Qualification and Registration Regulations") of either 2 years' supervised or 4 years' non supervised duration. Such work experience means attorneys would have exposure to current UK law and practice and issues of knowledge or skills gaps can be addressed by supervision and CPD. Rule 6 of the Examination and Admission of Individuals to the Register of Patent and Trade Mark Attorneys 2011 provide that the period of pre-registration practice should ordinarily mean the period ending immediately before the individual's application for admission, meaning that the attorney's skills and knowledge would reflect current best practice

In any case where the Registrar has "doubt" as to whether or not a person has completed the entry requirements, they may refer the matter to the appropriate regulatory Board (Regulation 4.6 of the Qualification and Registration Regulations). The relevant Board can undertake a full analysis of the

application assessing an applicant's knowledge and skills against the relevant competency framework.

4.3 IPReg considers the length of the sunset clause to be appropriate, allowing IPReg and the representative bodies to publish and promote notice of the pending sunset clause, followed by an academic year cycle for any would-be applicants to complete the final qualification.

4.4 Transparency: By this application, IPReg is seeking to address an anomaly whereby historic examinations have been recognised as exemptions to the current qualification pathway, notwithstanding this is not set out in the relevant Rules or in any policy.

IPReg is seeking to address this and therefore be more transparent in its decision making. Where a discretion may be exercised in relation to an individual case, decision-making guidance will make clear the factors that the Registrar would take into account in assessing an application.

4.5 Allowing the Registrar discretion in particular cases promotes fairness to applicants as the Registrar can take into account all of the circumstances pertaining to an individual applicant and is not bound by prescriptive rules which require the Registrar to make a decision regardless of an extenuating circumstance. By providing guidance on factors (see item 6) which might inform such decisions, applicants will be able to understand, both in cases of new admission and readmission, what circumstances will be taken into account when considering an application, and what mitigations would need to be in place to allow the Registrar to be assured that an applicant may be safely admitted to the register. It will mean that prospective applicants are clear about what evidence they should provide to support their request to invite the Registrar to exercise discretion in their favour. It will also provide assurance to prospective applicants and consumers, that decisions are made fairly and proportionately, following appropriate balancing of risk and mitigating factors.

4.6 Accountable: upon the sunset clause ending, an individual seeking first time entry on to a register with historic JEB examinations/historically approved course passes would be required to sit new examinations or attend a new course at either their expense or that of their firm. The discretion in decision-making afforded to the Registrar will extend to allowing an applicant more time than the provided for 18 months timeframe in order to complete the course/examination(s). This might be in circumstances (see item 6) where an individual has limited financial means, has caring responsibilities or any other factor relevant to their individual circumstances which suggests additional time is needed. There will be both accountability and transparency for the exercising of the discretion. IPReg will keep a record of any decision taken whereby the Registrar's discretion was used to set aside the general rule, and will update its factors guidance where new or novel reasons for exercising the discretion are used. As with all Registrar decisions these are subject to appeal pursuant to the [IPReg Appeals Rules](#) (Rule 2).

4.7 Should the rule change not be granted, applications for entry on to the register on the basis of very old examinations could continue in perpetuity, potentially risking the effectiveness of the profession and the interests of consumers (notwithstanding the other safeguards for entry on to the registers – please see item 5). Additionally, the lack of a formal rule in this area could continue to perpetuate a lack of transparency regarding historic exemptions and factors which might inform Registrar decision-making in such circumstances.

4.8 Consistent: the JEB exemptions were always afforded on the basis of transitional arrangements, which by their very nature would come to an end. It is important that the qualifications which would seek to form elements of the attorney qualification pathways have taken account of the [Accreditation Handbook Guidance](#), introduced in 2016, against which all currently accredited

provision has been assessed. We acknowledge the point (item 3 of the summary table at item 11) made by CIPA regarding the exemptions afforded to two of the Patent Examination Board examinations via an individual passing the EQE examinations; this will be looked at separately and in context of the pending reports of the [Mercer Review](#) of the education, training and assessment of UK Chartered Patent Attorneys. There has not been any other attempt to change the regulatory arrangement in the past two years (beyond minor amendments made to examinations/admission provisions under the Brexit Exemption Direction ED133).

**4.9 Targeted:** the sunset applies as standard only to those seeking first-time entry on the register who would be seeking to rely upon these examinations. Written decisions will be recorded in each case where the Registrar's discretion is exercised or not, and any discretion would be case-specific, targeted towards the individual circumstances and would not constitute any form of precedent.

## **5. Entry on to Register Safeguards**

5.1 In addition to gaining formal qualifications, Regulation 4.2(c) and 4.3 (c) of the [Patent Attorney and Trade Mark Attorney Qualifications and Registration Regulations](#) requires an applicant to have "substantial experience" of patent or trademark work of at least two years if supervised or four years if unsupervised. For the purposes of those Regulations, the period of "substantial experience" should ordinarily mean the period ending immediately before the application for admission. This requirement is contained in Rule 6 of the [Rules for Admission of Individuals to the Register](#).

5.2 If applying on the basis of having not less than two years' experience of full-time intellectual property work with substantial experience of trade mark/patent attorney work, the individual will have been supervised by a registered attorney, solicitor or barrister with substantial experience in this field. In most cases, IPReg will deem the experience to be of the type and at the level required for entry to the register if the individual has been appropriately supervised and will not require additional evidence of competency although IPReg may contact the supervisor(s) to verify the individual was working in a supervised capacity and that there are no concerns about their ability to work at the level of a newly registered attorney.

5.3 Applying on the basis of four years' unsupervised experience qualification is less common and usually affects only those who are "in-house" trainees in industry or acting as a legal adviser to their employer. As IPReg is unable to verify the quality and level of their work with a registered attorney or other regulated legal professional, we will usually require the individual to provide evidence of their experience using the [Competency Frameworks](#) as a basis against which to demonstrate their skills. We may ask for a training diary in which they set out a summary of work undertaken and an indication of the training need addressed by successfully completing that work. Alternatively, they may prefer to map their work experience directly against the competencies in the relevant framework. The individual is not required to have achieved advanced level competency in all areas but should be able to demonstrate that the work they have undertaken shows they have practical experience across a broad range of core attorney work at an appropriate newly qualified level.

5.4 Requiring current work experience provides good assurance of an individual's competency and fitness to practise in a patent or trade mark setting. In addition, registered attorneys must undertake 16 hours' CPD each practice year, utilising a variety of development tools. Where applicants have relied upon historic qualifications, the Registrar has taken particular care to ensure

that any knowledge or skills gaps that might be expected by virtue of the out of date qualifications is appropriately mitigated by current work experience.

5.5 That said, IPReg is firmly of the view, and this is acknowledged by stakeholders, that the time has come to formally draw a close to the historic qualification pathway, recognising that there needs to be a robust, accredited foundation of qualifications which ensure learning outcomes that reflect current best practice and which are embedded by a period practice in a professional setting.

## **6. Factors for Consideration by the Registrar/Equalities Considerations**

6.1 A sunset clause is proposed as a main feature of the rule change proposal. We will record and review any decisions where the Registrar's discretion is exercised to set aside the general rule. The sunset clause itself, the Registrar's discretion to extend that sunset clause upon evidenced application, and the consideration of factors guidance which will underpin this (as below), together, will ensure that an individual with extenuating circumstances is not unfairly prejudiced whilst still allowing for certainty as regards the general rule. IPReg considers that this approach strikes the balance between requiring applicant attorneys to have registered within a reasonable timeframe from receipt of appropriately accredited qualifications, and recognising and allowing for consideration of an individual's unique circumstances which may have made this impossible or impractical.

6.2 IPReg recognises that prescriptive rules potentially exclude and disadvantage an applicant who may not have been able to follow a standard qualification pathway. Allowing the Registrar to exercise discretion to set aside the general rule where fairness dictates and risk assessment allows, promotes fairness to applicants and demonstrates proportionate decision-making. Wherever a discretion is conferred, it is important that people understand how and in what circumstances the discretion may be exercised and IPReg will develop and publish these factors, keeping it under review and amending where necessary, given the factors listed here may not be exhaustive.

6.3 In any such cases, it would be for the applicant to provide sufficient assurance to demonstrate that the integrity of the register would not be put at risk and the Registrar is experienced in and familiar with the need to make these types of assessments in a variety of ways.

6.4 For example, as a result of the pandemic, the Registrar has exercised a discretion to allow, in certain circumstances, trainees who had been furloughed for short periods during their 2 years' supervised practice, to be admitted to the register. In those cases, the applicant was required to provide additional evidence from their supervisor to show that they met the Competency Framework for newly qualified attorneys even though their supervised experience felt short of the required two years. As above, the registrar has a discretion to admit an attorney to the register where an applicant's 2-years' supervised (or 4 years' unsupervised) experience has not been obtained immediately before the point of application to the register, as is "ordinarily" the expectation. The Registrar has also considered in the last 12 months, two cases where the registrant was seeking readmission to the register following removal after a disciplinary hearing. In both cases, a full risk assessment was undertaken, reviewing the sanctioning decisions of the Disciplinary Board and weighing the supporting documentation provided by the applicants which included references, evidence of additional learning and written submissions.

6.5 IPReg will publish on its website, the factors which follow which might be considered in the Registrar exercising discretion. Where an applicant may wish to rely upon their historic qualifications and considers they have extenuating circumstances which warrant the Registrar exercising the discretion to recognise those qualifications, they should consider the factors and make their application accordingly. The types of factors they must address are:

- the reason for the delay between obtaining their qualifications and seeking registration;
- what they have been doing since they gained their qualifications – for example working in an entirely different sector, doing intellectual property work but abroad or in the unregulated sector, carrying out caring responsibilities, illness etc.;
- their intentions as to future practice once registered (at least in the short term) – for example, in private practice in a supervised setting, working as a Sole Trader, working solely for their employer in-house, with evidence to support this;
- with reference to the Competency Criteria, what skills or knowledge gaps they identified whilst undergoing supervised or non-supervised practice and what they had done or will do to address those gaps – evidence of CPD, a training diary etc.;
- if previously registered and now seeking restoration, dates of registration, the reasons for leaving the register and the lapse of time between active practice and seeking restoration

6.6 Fitness to practice: in considering the information provided, the Registrar will primarily consider the applicant's current fitness to practise in order to assess the extent of any risk to consumers. The can include the proactive steps the individual has taken to be able to demonstrate up-to-date knowledge and appropriate skills and professional standards, be that through:

- Continuing Professional Development activities such as webinars and conferences, personal study for other related qualifications or of books, articles and law reports,
- serving on a related committee,
- appointment of and working with an appropriate mentor,
- commitment to any of the above in the time between application for waiver and prescribed end and demonstration of this having been delivered at time of subsequent application to register,
- other evidence that the individual considers appropriate.

6.7 The Registrar is more likely to exercise the discretion to allow registration on the basis of historic examinations where an applicant shows:

- they have spent not less than two years in a supervised practice setting immediately prior to their application for registration,
- the applicant is employed and will remain so by their current employer who supports their application for registration and can attest to the applicant's competence as against the [Competency Framework](#),
- the applicant shows they have engaged with CPD and have targeted their professional development to areas that are relevant to them and their practice

#### 6.8 The Registrar is less likely to exercise the discretion where:

- an applicant's practice prior to their application is not current, or not supervised and where they have not sufficiently demonstrated competency against the core competencies set out in the framework,
- they intend to immediately practise as a Sole Trader,
- the applicant has been working in an entirely unrelated sector prior to application.

6.9 Equality protected characteristics: the Registrar can consider a variety of factors regarding an applicant's particular circumstance and its impact upon their ability to have completed the qualification and experience in the (minimum) 10 years since embarking on the qualification route and application for entry on the register. The impact of the following have been assessed as having the potential to provide a barrier to qualification in what might typically constitute a reasonable timeframe (less than 10 years) and the Registrar will balance these alongside the fitness to practise factors above:

- Disability/illness – a significant disability (or illness or accident) can mean an individual has to withdraw from their studies or employment for a pronounced period of time, and/or at intervals, this can include mental health conditions with a long-term effect on normal day-to-day activities
- Gender reassignment – the process of reassignment of gender typically involves surgical procedures and hormone treatment, alongside counselling and support, can mean an individual has had to take time out of their studies or employment, this may be for a pronounced period of time, and/or at intervals
- Pregnancy and maternity – sole parental and/or child caring responsibilities can mean an individual has had to withdraw from their studies or employment, this may be for a pronounced period of time, and/or at intervals
- Other caring responsibilities – caring responsibilities for older people or close family members with health or mental issues may have disrupted an individual's qualification pathway
- Other – financial, such as furloughed due to pandemic and/or firm cannot afford to place the individual on course/examinations.

6.10 Whilst IPReg has not found the following factors to have typically provided a potential barrier to completion of the qualification in what might typically constitute a reasonable timeframe (less than 10 years):

- Age
- Marriage or civil partnership
- Race
- Religion or Belief
- Sexual orientation
- Sex (gender).

that would not prevent an individual seeking to provide evidence of such in applying for a waiver on the basis of the following other protected characteristics.

6.11 This assessment of the impact of the proposed policy on equality protected characteristics has been signed off by the Chair of the IPReg Board, Lord Chris Smith of Finsbury, IPReg's named EDI Officer, for the purposes of IPReg's signing up to the [IP Inclusive Charter](#).

6.12 We will record and review any decisions where the Registrar's discretion is invoked to set aside the general rule and update the consideration factors guidance as appropriate.

## **7. Intended Outcome of Rule Change and How This Will Be Assessed**

7.1 Should there be any applications to the Registrar to exercise discretion as at item 6 above, these will be recorded and the reasons for the decision reached will be documented. As with all Registrar decisions these are subject to appeal pursuant to the IPReg Appeals Rules (Rule 2).

7.2 IPReg anticipates a negligible immediate impact given this is a sunset clause designed to afford a reasonable timeframe to end the continued "transitional arrangement" recognition of historic qualifications.

7.3 The overwhelming majority of individuals who would seek entry on to the register of attorneys on the basis of aged qualifications are already on the register(s). In the last three years 38 applications (10% of the 360 applications made) to the register have relied on an element of historic qualification and these have reduced in number/proportion each of those years:

- 2020 - total 115 applications for entry on to registers, 6 of whom (8.5%) relied upon historic qualifications
- 2019 - total 118 applications for entry on to registers, 9 of whom (9.3%) relied upon historic qualifications
- 2018 – total 127 applications for entry on to registers, 21 of whom (16.5%) relied upon historic qualifications.

7.4 In the last calendar year we received one enquiry regarding whether JEB examinations were still accepted. We would anticipate no more than 10 applications prior to the end of the sunset clause and consider that this rule change would have the positive effect of prompting those individuals to make their applications prior to the end of the sunset clause period where they may otherwise have waited.

7.5 We will record and review all decisions where the Registrar's discretion is invoked to set aside the general rule and update the consideration factors guidance as appropriate.

## **8. Proposed alteration – impact upon areas regulated by other approved regulators**

8.1 There is no crossover and/or conflict; these are IPReg approved qualifications upon which there is no reliance for application to another legal profession register.

8.2 The Solicitors Qualifying Examinations provide 11 years for those currently on the pre-existing solicitor qualification pathway to qualify via the new route. This would not appear to be at odds with IPReg's proposal.

## **9. Timeframe**

9.1 The 18 month term allows 6 months to promote the pending 12 month period in which an individual could complete the Final Level Qualification and/or their work experience. Upon LSB approval of the rule change proposal, should it determine such, IPReg will introduce the 18 months

sunset clause within 2 weeks of being advised of that approval. It will work with the representative bodies to promote the triggering of the sunset clause and with Nottingham which would offer one more iteration of the 4 month intensive course for JEB candidates.

9.2 IPReg does not foresee any additional risk to consumers in this 18 month sunset period. As set out above, applications where aged qualifications are relied upon are already analysed carefully with additional supporting evidence required as necessary to ensure that the applicant demonstrates current fitness to practise. This might include evidence of training diaries, references and CPD records, even where an applicant's practice has been supervised. If an applicant seeks to rely on historic qualifications and has not applied immediately after the mandated period of supervised or non-supervised practice, the Registrar or the relevant Regulatory Board already has the discretion to refuse the application where IPReg is not sufficiently assured of the applicant's risk profile.

## **10. IPReg Consultation**

10.1 IPReg undertook the [Sunset Clause Consultation](#) for the 8 weeks of 26 November 2020 until 21 January 2021. The representative bodies, CIPA and CITMA, were provided with advance sight of the consultation document on 12 November. All qualification agencies – the universities of Bournemouth, Brunel, Nottingham Trent, Queen Mary London and the Patent Examination Board - were provided with advance sight of the consultation document on 20 November. When the consultation went live on 26 November, all parties were contacted again to confirm this and sent the hyperlink to the now published consultation paper. The representative bodies and all of the qualification agencies were explicitly invited to partake in the consultation and the representative bodies also signposted their members. Four responses were received: from CIPA, CITMA, Nottingham Law School (provider of the intensive advanced qualification course created specifically for accommodating the transitional arrangements) and an individual seeking clarification as to the potential ramifications for their own circumstance (already on register). Additionally, Queen Mary University London was approached separately following the consultation, expressly to determine if they were content with their 2013 and prior cohort courses being included in the sunset clause (having not been explicitly named in the consultation). Their response is provided in the summary table which follows.

## 11. Summary of Consultation Responses and Proposals made to, and Agreed by 18 March 2021 Meeting of IPReg Board

What follows is a summary table of the points made in the (4) responses and the corresponding IPReg proposals which were taken to, and approved by, the 18 March 2021 meeting of Board. In particular, IPReg has sought to fully take account of the responses of both CIPA and CITMA relating to individual extenuating circumstances and accordingly will afford opportunity for the Registrar to take account of factors which have not allowed for the individual to sit the final qualification(s), or gain the necessary experience, in the 18 months sunset clause period. Additionally, the subsequent response from QMUL has been added to the summary table. It is on the basis of the following consultation responses and corresponding proposals that this rule change application is made.

Respondent	Feedback	Proposal made to, and agreed by, IPReg Board
<p><b>Chartered Institute of Patent Attorneys</b></p>	<p>1. Queries why consultation was issued ahead of, and not within, the regulatory arrangements review:- are there specific issues which have arisen? What is IPReg’s impact assessment of a sunset clause, in particular the number of people likely to be affected?</p>	<p>1. This is a discrete point of consultation regarding a historic commitment, it does not impact upon other regulatory arrangements and therefore nothing about the broader review requires to await this. The timing purposely complements the regulatory arrangements review now underway without losing the discrete point this consultation covers.</p> <p>Over the last 3 years, there have been 38 applications to the registers on the basis of historic qualifications:</p> <p><u>2020: total 6 (8.5%)</u> Of 70 Patent Attorneys, 4 relied on some JEB examinations. Of 45 Trade Mark Attorneys, 2 relied on some JEB examinations.</p> <p><u>2019: total 11 (9.3%)</u> Of 118 Patent Attorneys, 9 relied on historic qualifications: 7 on JEB examinations, 1 on Manchester and 1 on Brunel PG certificates.</p> <p><u>2018: total 21 (16.5%)</u> Of 127 Patent Attorneys, 18 relied on historic qualifications: 13 on JEB examinations, 1 on Manchester and 4 on Brunel PG certificates. Of 48 Trade Mark Attorneys, 3 relied on old examinations, 2 on JEB and 1 on Brunel.</p>

	<p>2. “No reference is made to a notice period in relation to patent attorney qualifications, whereas a notice period of eighteen months is stated for trade mark attorney qualifications. CIPA takes the view that there should be notice period of at least four years for those working towards qualification as a patent attorney. This is in recognition of the time it will take an individual who is going to be affected by these changes and has a current legitimate expectation that the qualifications achieved to date are assured, to prepare for any remaining examinations, take those examinations and, if necessary, attempt any resits”.</p> <p>3. “It is worth noting that there is no sunset clause or similar provision in relation to European Qualifying Examinations (EQE). A candidate with a historic EQE pass would be exempt from taking the FD2 and FD3 examinations, whereas a candidate with a historic JEB qualification will have to take the current equivalent to gain entry onto the Register”.</p> <p>4. Not uncommon for individuals to take breaks from their careers for a substantial amount of time e.g. parental responsibilities, personal illness or disability:- IPReg will need to ensure there is no potential discrimination towards persons with protected characteristics under the Equality Act.</p>	<p>2. Both trade mark and patent attorney qualifications provided by the JEB are listed and the proposed 18 months sunset would apply to both. The 18 months provision was suggested on the basis that it affords a qualification cycle opportunity for an individual to enter onto the register on the basis of the historic qualifications. The 18 months sunset clause would allow the Registrar to consider applying a discretion on a case-by-case basis. IPReg will publish its policy on Registrar decision-making and in what circumstances discretion may be applied to allow for a longer timeframe in individual circumstances. Please see item 4.</p> <p>3. This will be looked at subsequently and separately. We will be interested in the Mercer Review Report, expected imminently, and whether it has any recommendations regarding the current exemptions afforded to PEB examinations on the basis of the EQE examinations.</p> <p>4. Fully take account of this point and as above, this will form part of the Registrar decision-making policy which will be published on the IPReg website. This will provide opportunity for the Registrar to take account of factors which have not allowed for the individual to sit the final qualification(s), or gain the necessary experience, in the 18 months sunset clause period. The 2021 EDI training scheduled for IPReg Board and office will include EQIAs.</p>
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	<p>5. “We have concerns that it would be a matter for the Registrar’s discretion on a case-by-case basis as to how long provisions might apply for those who were once entered onto the Register and are seeking admission. There should be clear rules for readmission to the Register which enable individuals seeking readmission to demonstrate that they remain in good professional standing”.</p> <p>6. Does not consider that the fact the examinations and courses pre-date the IPReg Accreditation Standards and Syllabus requirements to be sufficient a reason for them to be considered stale, “the law does not change significantly over time...the foundation laws for intellectual property such as the Patents Act 1977, the Trade Marks Act 1994, the Designs Act 1949, and the</p>	<p>5. Firm rules potentially exclude and disadvantage the applicant but allowing the Registrar discretion in particular cases will promote fairness to applicants. Transparency of decision-making is important and the policy on how decisions in such cases will be reached will allow applicants to understand, both in cases of new admission and readmission, what circumstances will be taken into account when considering an application, and what mitigations would need to be in place to allow the Registrar to be assured that an applicant may be safely admitted to the register. The emphasis in such circumstances is upon the individual providing sufficient evidence to demonstrate that the integrity of the register would not be put at risk. Examples of Registrar discretion in such circumstances: (1) As a result of the pandemic, the Registrar has exercised a discretion to allow, in certain circumstances, trainees who had been furloughed for short periods during their 2 years’ supervised practice, to be admitted to the register where they have been able to show that they meet the Competency Framework for newly qualified attorneys rather than apply a strict 2-year rule requirement. (2) The registrar has a discretion to admit an attorney to the register where an applicant’s 2-years’ supervised (or 4 years’ unsupervised) experience has not been obtained immediately before the point of application to the register, as is “ordinarily” the expectation. In such circumstances the Registrar considers a variety of factors to form a view as to the applicant’s immediate fitness to practise despite the gap in practice.</p> <p>6. It is acknowledged that these long standing laws remain fundamental to IP legal knowledge. It is not the legislation which is considered stale. It is the amount of time which has elapsed since an individual learned about, and was examined on that legislation - and the case law and direction of travel of the</p>
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	<p>Copyright, Designs and Patents Act 1988, are long-standing and are the core elements of the JEB foundation papers and the university courses”.</p> <p>7. Queries how “their age [of the qualifications] means we cannot be wholly confident that they meet the regulatory objective of encouraging an independent, strong, diverse and effective legal profession nor that of protecting and promoting the consumer interest”.</p> <p>8. With regard to historic university courses, these provided exemption from the foundation examinations. The sunset clause removes the right to enter onto the Register with JEB examination passes. An individual who is exempt from the PEB foundation examination by way of a historic university qualification will still be required to take the higher PEB examinations to gain entry onto the Register. CIPA asks IPReg to consider if this is enough of a safeguard to guarantee suitability to be entered onto the Register, rather than require those with historic university qualifications to take the foundation examinations”.</p> <p>9. Asks for the matter to be discussed at the Regulatory Forum.</p>	<p>profession since as well as the absence of contemporaneous learning - which is the risk to the integrity of the register.</p> <p>7. The risk to the effectiveness of the legal professional, and therefore the consumer interest, is inversely in relation to the time that has elapsed since the individual was examined on their intellectual property knowledge.</p> <p>8. The attorney qualifying pathways have two levels of qualification and both must be completed to the satisfaction of the Registrar.</p> <p>9. Agreed, discussed at the Regulatory Forum dated.</p>
<p><b>Individual Respondent (asked for name to be withheld)</b></p>	<p>11. Content with the proposals, upon clarity of the statement “<i>This would apply to those who took the historic examinations or courses only (i.e. did not enter on to the register/practise as an attorney)</i>” whereby ‘the register’ means any one of the three relevant registers, such that:</p>	

	<p>a) A patent attorney (whether UK or European) with historic exemptions can still qualify as a trade mark attorney, by taking just the PCTMP.</p> <p>b) A European patent attorney with historic exemptions can still qualify as a UK patent attorney by taking the PEB Final Diploma.</p> <p>c) A trade mark attorney with historic exemptions can still qualify as a patent attorney, by taking the Final Diploma examinations.</p>	<p>11.a) Yes, can still qualify.</p> <p>11.b) Yes, can still qualify, though subject to any proposals coming out of Mercer Review (see item 3).</p> <p>11.c) Yes, can still qualify.</p>
<p><b>Nottingham Law School, Nottingham Trent University</b></p>	<p><u>12. NLS' area of interest:</u> NLS has offered the RTMA Intensive Qualification Course since 2011. The proposal correctly states the reasons for its introduction. NLS agrees that the exemption for former JEB candidates should cease and agrees with the reasons given in the proposal for its cessation.</p> <p><u>13. Sunset Clause – 18 months:</u> NLS has concerns about the proposal for the length of the sunset clause. NLS considers this to be too generous a period given the comments made in the proposal concerning the currency of any JEB assessments held up for exemption. The proposal acknowledges those that may have taken career breaks and NLS agrees with the comment that “eligible JEB graduates who may have taken career breaks have been sufficiently accommodated”.</p> <p><u>14. Foundation Level Qualification:</u> although these proposed arrangements do not affect NLS' offering, NLS is in agreement with the proposal to remove the exemptions for the same reasons submitted in the proposal for the ending of the RTMA Intensive Qualification Course for former JEB candidates.</p>	<p>12. Noted.</p> <p>13. Minimum 18 months sunset period affords opportunity to engage with a qualification cycle.</p> <p>14. Noted.</p>
<p><b>Queen Mary University London</b></p>	<p>We see no objection to the proposed sunset clause. How long an exemption should remain valid is entirely a matter for IPReg.</p>	

27th January 2021

Fran Gillon  
Chief Executive  
Intellectual Property Regulation Board  
5th Floor, The Outer Temple  
222-225 Strand  
London  
WC2R 1BA

**Consultation on a sunset clause to end recognition of historic JEB examinations and IPReg approved courses**

Dear Fran,

Thank you for the opportunity to respond to the consultation on IPReg's proposal to introduce a sunset clause to end recognition of historic JEB examinations and IPReg-approved courses. The Chartered Institute of Patent Attorneys (CIPA) is responding to the consultation in its capacity as the Approved Regulator for patent attorneys, as defined in the Legal Services Act 2007, and as the representative professional body for Chartered Patent Attorneys in the UK.

CIPA Council reviewed the consultation document and asked its Education Committee to prepare a response on behalf of Council.

Council would be interested to know why IPReg has decided it needs to address this matter now, given that a full review of the regulatory arrangements is due to commence soon. If specific issues have arisen out of the historic JEB examinations and IPReg-approved courses, could these be shared to aid understanding as to why this proposal is being made at this time? Council would also be interested in IPReg's impact assessment on the introduction of the sunset clause, in particular the number of people likely to be affected by ending the recognition of JEB examinations and other approved courses.

No reference is made to a notice period in relation to patent attorney qualifications, whereas a notice period of eighteen months is stated for trade mark attorney qualifications. CIPA takes the view that there should be a notice period of at least four years for those working towards qualification as a patent attorney. This is in recognition of the time it will take an individual who is going to be affected by these changes and has a current legitimate expectation that the qualifications achieved to date are assured, to prepare for any remaining examinations, take those examinations and, if necessary, attempt any resits.

It is worth noting that there is no sunset clause or similar provision in relation to the European Qualifying Examinations (EQE). A candidate with a historic EQE pass would be exempt from taking the FD2 and FD3 examinations, whereas a candidate with a historic JEB qualification will have to take the current equivalent to gain entry onto the Register.

**CIPA**  
The Chartered Institute of Patent Attorneys

2<sup>nd</sup> Floor, Halton House  
20-23 Holborn  
London EC1N 2JD  
T: 020 7405 9450  
F: 020 7430 0471  
E: [mail@cipa.org.uk](mailto:mail@cipa.org.uk)  
W: [cipa.org.uk](http://cipa.org.uk)

PATENTS  
TRADE MARKS  
DESIGNS  
COPYRIGHT

It is not uncommon for individuals to take breaks from their careers for a substantial period of time. Career breaks may occur due to parental responsibilities, caring responsibilities, personal illness or disability, or another reason outside of the control of the individual concerned. Before ending the recognition of historic qualifications, CIPA urges IPReg to consider the impact on individuals who have taken career breaks and, in particular, ensure there is no potential discrimination towards persons with protected characteristics under the Equality Act.

CIPA notes that the proposal is made on the basis that these historic examinations/courses should no longer be considered acceptable for entry onto the Register and would apply to those who took the historic examinations or courses only and who did not enter onto the Register. We have concerns that it would be a matter for the Registrar's discretion on a case-by-case basis as to how long provisions might apply for those who were once entered onto the Register and are seeking readmission. There should be clear rules for readmission to the Register which enable individuals seeking readmission to demonstrate that they remain in good professional standing.

Whilst it is the case that the qualifications referred to predate the IPReg Accreditation Standards and Syllabus requirements, the law does not change significantly over time. Where there is a significant change, this is an issue for the entire profession and not just those who have started their training but who have not completed their exams. The foundation laws for intellectual property such as the Patents Act 1977, the Trade Marks Act 1994, the Designs Act 1949, and the Copyright, Designs and Patents Act 1988, are long-standing and are the core elements of the JEB foundation papers and university courses.

In discussing the currency of qualifications, the proposal states that "... their age mean[s] we cannot be wholly confident that they meet the regulatory objective of encouraging an independent, strong, diverse and effective legal profession nor that of protecting and promoting the consumer interest". Whilst this is important for designing the regulatory future of the profession, we are not sure how this applies to historic foundation level examinations or exemptions, or to JEB finals papers.

With regard to historic university courses, these provided exemption from the foundation examinations. The sunset clause removes the right to enter onto the Register with JEB examination passes. An individual who is exempt from the PEB foundation examination by way of a historic university qualification will still be required to take the higher PEB examinations to gain entry onto the Register. CIPA asks IPReg to consider if this is enough of a safeguard to guarantee suitability to be entered onto the Register, rather than require those with historic university qualifications to take the foundation examinations.

Please let me know if any of the points raised here require amplification or clarification. CIPA asks that IPReg does not make any final decision on introducing a sunset clause to end recognition of historic JEB examinations and IPReg-approved courses until this proposal has been discussed at the Regulatory Forum.

Yours sincerely



Lee Davies, Chief Executive

**IPReg consultation: proposing a sunset clause to end recognition of historic JEB examinations and IPReg approved courses**

The Chartered Institute of Trade Mark Attorneys (CITMA) is responding to the consultation by IPReg in its capacity as an Approved Regulator, as defined in the Legal Services Act 2007 (the Act) and as the representative body for Registered Trade Mark Attorneys and the wider trade mark and design profession. The review of the consultation and preparation of this response has been conducted by the Executive committee and the Education, Qualification & Standards committee of CITMA on behalf of the CITMA Council.

We are grateful to IPReg for the opportunity to comment and would be happy to discuss our response further.

We agree that it is an appropriate time to end the transitional arrangement of providing exemptions because of Join Examination Board (JEB) examination qualifications. We support the reasoning provided by IPReg in the consultation but wish to express one point which we would ask IPReg to consider.

There may be legitimate, but exceptional circumstances, where it is not possible for an individual to seek and obtain qualification before the end of the proposed 18-month notice period. Whilst we agree that 18 months will be, in normal circumstances, a sufficient timeframe we would ask IPReg to consider if flexibility and/or discretion can be applied, to enable individuals to seek an extension beyond this time frame, if the reasons are justifiable.

As one example, an individual could be unemployed during the 18-month period and not have the income required to be able to complete qualification. In this scenario, we would like the individual to be able to apply to IPReg to preserve their exemption(s) and/or agree a longer timeframe.

We would suggest any extension beyond the 18-month period is entirely at the discretion of IPReg rather than an automatic right, there may be further information required by IPReg. Any extension could be time limited and final.

Whilst the above is an example of an exceptional circumstance and probably unlikely to occur, some flexibility in the system would ensure that those who may not be able to legitimately qualify can still potentially rely on qualifications obtained and exemptions.

For and on behalf of the Chartered Institute of Trade Mark Attorneys



Keven Bader  
**Chief Executive**

20<sup>th</sup> January 2021

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**The IPReg Proposal**

*That the historical exams/course should no longer be considered acceptable for entry onto the register.*

**NLS' area of interest**

NLS has offered the RTMA Intensive Qualification Course since 2011. The proposal correctly states the reasons for its introduction. NLS agrees that the exemption for former JEB candidates should cease and agrees with the reasons given in the proposal for its cessation.

**Sunset Clause – 18 months**

NLS has concerns about the proposal for the length of the sunset clause. NLS considers this to be too generous a period given the comments made in the proposal concerning the currency of any JEB assessments held up for exemption.

The proposal acknowledges those that may have taken career breaks and NLS agrees with the comment that "eligible JEB graduates who may have taken career breaks have been sufficiently accommodated".

**Foundation Level Qualification**

Although these proposed arrangements do not affect NLS' offering, NLS is in agreement with the proposal to remove the exemptions for the same reasons submitted in the proposal for the ending of the RTMA Intensive Qualification Course for former JEB candidates.

**The NLS Practitioner IP Course Team**

**Joy Davies**

**Peter Vaughan**

**Professor Jane Jarman**

**Robert Furneaux**

**Chris Ryan**

**28 January 2021**