



### Summary of decision

The purpose of this summary sheet is to provide a high level and accessible overview of the Legal Services Board's ("LSB") decision. Readers are recommended to read the formal decision notice below for further detail. **This summary 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").**

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 under the IPReg Examination and Admission of Individuals to the Register Rules.

The Rules will amend Schedule 3 of the IPReg Examination and Admission of Individuals to the Register Rules to make clear that exemptions from certain historic courses are currently accepted but will not routinely be awarded from 01 February 2023.

Following assessment of IPReg's application, 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 for approval of changes to regulatory arrangements to introduce a sunset clause to exemptions afforded to historic qualifications.**

1. The Legal Services Board (**LSB**) has granted an application from the Intellectual Property Regulation Board (**IPReg**) for approval of amendments to introduce a sunset clause to exemptions afforded to historic qualifications.
2. 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 (**CIPA**) and the Chartered Institute of Trade Mark Attorneys (**CITMA**) are the joint approved regulators for Patent and Trade Mark Attorneys and have delegated their regulatory functions to IPReg. The notes at page 6 of this notice explain the statutory basis for the decision.
3. This decision notice sets out the decision taken, including a brief description of the changes. The chronology for the LSB’s handling of this application is also set out at the end of this decision notice.

## Chronology

- The LSB confirmed receipt of an application from IPReg on 03 June 2021.
- The 28-day initial decision period for considering the application ended on 30 June 2021.
- On 29 June 2021, the LSB issued an extension notice which extended the decision period to 31 August 2021.
- This decision notice is effective from 20 July 2021.
- The decision notice will be published on our website on 22 July 2021.

## Background

4. Historically, CIPA and CITMA acted together as the Joint Examination Board (**JEB**), setting and administering qualifying examinations for entry on to the attorney registers. In this application, IPReg set out that 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.
5. Between 2010 and 2012 the examinations were phased out and the JEB was wound down. Following this, transitional arrangements were put in place to allow individuals holding JEB qualifications to obtain exemptions from certain requirements of other professional qualifications. All but one of these exemptions were given effect through unwritten policy and custom, and this approach remains in place. This means that Schedule 3 (Exemptions and Deemed Passes), of the ‘Examination and Admission of

Individuals to the Register Rules', (the "**Amended Rules**") does not expressly reference most of the historic JEB qualifications as providing exemptions.

6. IPReg states it continued to observe these exemptions in the interest of fairness and consistency, but with the intention that these exemptions would be drawn to a close.

## Summary of proposed changes

### Current arrangements

7. In paragraph 1.4 to 1.10 of the application the current route to admission to the register is set out.
8. As noted above, the rules set out in Schedule 3 prescribe exemptions for historic courses provided by some universities, but most are not provided for in the rules and have been given effect as a matter of unwritten policy.

### Key substantive changes

9. The application initially proposed minor amendments to Schedule 3, including adding a note which set out which qualifications would no longer provide exemptions to qualifying examinations. IPReg proposed introducing an 18-month sunset clause, after which, the historic exemptions would come to an end.
10. The application also included at paragraphs 6-6.12 details on how the Registrar would be guided in exercising its discretion to waive the rules in the event of extenuating circumstances<sup>1</sup>. IPReg has committed to finalising and publishing on its website the factors that will inform the Registrar's assessment of applications for a waiver of the sunset clause. IPReg set out that any decision made by the Registrar is subject to appeal and that all decisions will be recorded and reviewed.

### Reasons for change

11. IPReg has noted that, by the time the 18-month period is at an end, the JEB examinations would be at least ten years old, and the specified historic courses would be at least nine years old. The proposed amendments, therefore, seek 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.
12. Following consultation, IPReg decided that an 18-month transitional period was most appropriate as this timeframe allows for 6 months promotion of the sunset clause

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<sup>1</sup> IPReg notes that the Registrar's discretion could be exercised in cases where an individual had been unable to sit the final qualification(s) or gain the necessary experience in the 18-month sunset period, due to extenuating circumstances. This meant that strict observation of the rule would be unfair or disproportionate. This could include, for example, where an individual has taken time out to care for children or because of their own ill health, or where a trainee had been furloughed for short periods during their 2 years' supervised practice.

followed by a 12-month period in which an individual potentially affected by these this arrangement could complete a Final Level Qualification offer and/or complete their experience requirements.

### **Key issues considered in the assessment of the application.**

#### *Correcting the rules to reflect all current exemptions.*

13. In reviewing this application, we asked IPReg to explain why it had not chosen to amend the rules by reflecting all current exemptions along with a specific sunset clause as a part of this application. We explained our view that it would be in the public interest to ensure the regulatory arrangements clearly set out all currently applicable exemptions. Where there are current exemptions which are not included in the exemption table in Schedule 3, such qualifications should be accounted for either by adding them to the Schedule or indicating that the schedule is non-exhaustive and that candidates should contact IPReg for advice.
14. IPReg responded by proposing an amendment to the exemption table at Schedule 3 to include all exemptions currently afforded. IPReg also amended its proposed *Note 3* to the Schedule, to include an end date of 1 February 2023 from when the specified historic qualifications will no longer be deemed equivalent to some of the requirements of the Qualifying Examinations, and therefore no longer provide exemptions to those examinations. We welcome these amendments to ensure that the regulatory arrangements accurately reflect the position in practice.

#### *Consistency of approach - other examples of historic qualifications*

15. In reviewing this application, we asked IPReg to provide an explanation as to why the historic qualifications set out in this application require a sunset clause, but other aged qualifications, such as a law degree that is over 10 years old, or the European Qualifying Examination (**EQE**), might not.
16. IPReg explained that the sunset clause will not apply to qualifications accredited by bodies other than IPReg, such as a law degree or EQE, as these qualifications cover foundations of law and provide exemption to elements of the IPReg-accredited qualifications, which cover the broader legal landscape.
17. IPReg confirmed that it has always been its policy to recognise qualifications, such as a law degree or the EQE, as providing exemptions to IPReg accredited courses. However, the exemptions afforded to JEB Examinations were on the basis of transitional arrangements, and as such, would come to an end. By maintaining this policy, IPReg has assured us that it is acting consistently within its established process.

*Other issues*

18. We highlighted that the date of the memorandum at the end of Schedule 3 needs to be amended. IPReg amended the memorandum to confirm a start date for the 18-month transitional arrangement of 01 August 2021.

**Decision**

19. The LSB has considered IPReg's application against the criteria in paragraph 25(3) of Schedule 4 to the Act. We consider that there is no reason to refuse this application; accordingly, the application is granted.

20. **Annex A** to this decision notice contains the amendments to the regulatory arrangements approved by the LSB.

**Matthew Hill, Chief Executive**

**Acting under delegated authority granted by the Legal Services Board**

**20 July 2021**

*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 rules<sup>2</sup> 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.

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<sup>2</sup> Rules for Rule Change Applications – Version 2 (November 2010)

## Annex A

Annex A contains an extract of the Rules for the Examination and Admission of Individuals to the Registers of Patent and Trade Mark Attorneys 2011, showing all amended text.

### Rules for the Examination and Admission of Individuals to the Registers of Patent and Trade Mark Attorneys 2011

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].

#### 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

<p><del>Brunel University Postgraduate Certificate in Intellectual Property Law/LLM in Intellectual Property with elective module in International Patents Practice Management and (until September 2013) elective module in International Trade Mark Practice Management</del></p>
<p>European Qualifying Examination for European Patent Attorneys</p>
<p><u>Joint Examination Board letters exempting candidates from JEB examinations*</u></p>
<p><u>Joint Examination Board Common Foundation Paper – Basic English Law*</u></p>
<p><u>Joint Examination Board Common Foundation Paper – Designs and Copyright Law*</u></p>
<p><u>Joint Examination Board Common Foundation Paper – T1 Basic United Kingdom Trade Mark Law*</u></p>
<p><u>Joint Examination Board Common Foundation Paper – T5 Basic Overseas Trade Mark Law and Practice*</u></p>
<p><u>Joint Examination Board Patent Advanced Paper – P2 Patent Agent’s Practice*</u></p>
<p><u>Joint Examination Board Patent Advanced Paper – P3 Preparation of Specification for United Kingdom and Overseas Patents*</u></p>
<p><u>Joint Examination Board Patent Advanced Paper – P4 Amendments of Specifications for United Kingdom Patents/Applications in Prosecution, Revocation Proceedings or Otherwise*</u></p>
<p><u>Joint Examination Board Patent Advanced Paper – P6 Infringement and Validity of United Kingdom Patents*</u></p>
<p><u>Joint Examination Board Patent Foundation Paper – P1 Basic United Kingdom Patent Law and Procedure*</u></p>
<p><u>Joint Examination Board Patent Foundation Paper – P5 Basic Overseas Patent Law and Procedure*</u></p>
<p><u>Joint Examination Board Trade Mark Foundation Paper – T2 Basic United Kingdom Trade Mark*</u></p>
<p><u>Joint Examination Board Trade Mark Advanced Paper – T3 Advanced United Kingdom Trade Mark Law and Practice*</u></p>
<p><u>Joint Examination Board Trade Mark Advanced Paper – T4 Advanced Trade Mark Search</u></p>

<u>Joint Examination Board Trade Mark Advanced Paper – T6 Advanced Community Trade Mark and International Trade Mark Law and Practice</u>
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<u>Manchester University Postgraduate Intellectual Property Diploma*</u>
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Note1. 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. As of 1 February 2023, neither IPReg accredited Intellectual Property qualifications obtained from the universities of Bournemouth, Brunel, Manchester, Queen Mary London prior to and including 2013 cohorts, nor the historic Joint Examination Board examinations prior to and including 2011 passes (or 2012 resits), are deemed equivalent to some of the requirements of the Qualifying Examinations. Individuals holding those qualifications who have been unable, due to extenuating circumstances, to apply for entry on to the register prior to 1 February 2023, may apply to the Registrar to continue to recognise those qualifications in their specific case. Information on the factors for consideration by the Registrar in such circumstances will be provided on the IPReg website.

Memorandum

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

Pursuant to regulation 10 and in consultation with CIPA and CITMA amendments have been made to Schedule 3 (1 August 2021).