

**RULE CHANGE APPLICATION MADE BY THE PATENT REGULATION BOARD  
AND THE TRADE MARK REGULATION BOARD  
AS THE INTELLECTUAL PROPERTY REGULATION BOARD  
TO THE LEGAL SERVICES BOARD  
UNDER SCHEDULE 4, PART 3, PARAGRAPH 20(1)  
LEGAL SERVICES ACT 2007**

**7 November 2018**

**APPLICATION TO AMEND REGULATIONS TO REDUCE THE NOTICE PERIOD  
FOR SUSPENSION FOR NON-PAYMENT OF FEES, AND AMENDMENT TO  
SERVICE OF DOCUMENTS**

## CONTACT DETAILS

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## 1. Introduction

- 1.1 IPReg has the power to make regulations to suspend a person's registration from the Register. This is provided for in the Copyright, Designs and Patents Act 1988, s275A(2)(e) (pursuant to the Legal Services Act 2007 at s 185) and the Trade Marks Act 1994 s83A(2)(e) (pursuant to the Legal Services Act 2007 at s184).
- 1.2 On 8 February 2018, IPReg got approval from the Legal Services Board to amend its regulatory arrangements to provide for the power to suspend registered individuals from the register in the following circumstances:
- i. Upon non-payment of the fee to renew registration ("the practising fee");
  - ii. Where the registrant is non-compliant with or fails to provide evidence of compliance with continuing professional development ("CPD") requirements;
  - iii. Where the registrant does not have or fails to provide evidence of compliant Professional Indemnity Insurance ("PII") arrangements;
  - iv. Where the registrant does not provide any other evidence that may be required by the Registrar in order to satisfy herself that the registrant is compliant with IPReg's regulations.
- 1.3 The effect of these changes meant that IPReg could give one month's notice or warning of suspension from the register where, two months after the renewal date<sup>1</sup>, the firm or individual had not paid their practising fee. This in effect means that a firm or individual has three months to pay their practising fee for the upcoming year before any regulatory action can be taken against them.
- 1.4 The payment of the practising fee is one part of the annual renewal process which also includes confirmation of compliance with IPReg's CPD requirements, confirmation that suitable PII cover is held and confirmation of the number of complaints received about them from clients in the previous year<sup>2</sup>. While IPReg has the power to suspend for failure to comply with non-practising fee related requirements, the current regulatory arrangements do not prescribe the same term for initial compliance (i.e. two months). Currently, registrants need to provide complaints data and declare their CPD obligation within one month of being asked to do so before being warned of the risk of suspension, and no time period is stated for evidencing appropriate PII arrangements. In practice, IPReg has followed the same timeline for compliance with these matters as for payment of the practising fee for consistency and procedural ease<sup>3</sup>.
- 1.5 During the 2018 annual return / re-registration process, it appeared that some firms and individuals deliberately delayed the completion of the process to take advantage of the three-month period before which there would be any sanction for non-compliance. We noted for example, that some firms would wait until late February before asking IPReg to invoice them the practising fee due, then, in accordance with their terms of business, not make the payment for a following 28 days in late March. In the case of one individual, they did not pay their practising fee until the very last day of the suspension warning period, which fell on a Saturday. This suggested a deliberate attempt to avoid regulatory compliance for as long as possible.
- 1.6 IPReg opened its renewal process for the 2018 practice year, on 15 December 2017. This was the earliest it could do so following LSB approval for the practising fee rates and liaison with our

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<sup>1</sup> Set at 1 January in each year

<sup>2</sup> Registrants may not necessarily have to provide all of this information, depending on their registration category

<sup>3</sup> Depending on the risk presented in each case and any other relevant factors, IPReg may reduce the time specified to provide evidence of valid PII in particular

(external) IPReg Pro database provider to get the online user portal ready for administering the process. This allowed a period of 10.5 weeks to complete the renewal process before a warning of suspension was triggered, and 15 weeks before actual suspension took place.

- 1.7 While overall we consider that the new power to suspend for non-compliance did improve compliance rates, we think that bringing forward the suspension warning notification to one month after the renewal date (in effect allowing two months to renew annual registration before registration could be suspended), should provide an additional incentive for compliance. By having a shorter renewal period of two months (though still a longer period than some other regulatory bodies<sup>4</sup>) IPReg considers consumer protection would be enhanced by achieving more prompt regulatory compliance, and the expenditure of IPReg resources during the renewal process should be reduced.
- 1.8 IPReg considers that another way to reduce the resources required to ensure compliance with the annual renewal process, is the process by which we serve documents and notices on individual registrants and entities. Our current arrangements require that service should be made personally on the registrant or by mail to their last known address with proof of postage. During the 2018 registration renewal process, we spent approximately £500 on postage costs for letters relating to non-compliance with the renewal process, warning of suspension, suspension and removal from the register. In addition, there is the operational cost of having a member of staff physically going to the post office to send the letters and obtain proof of postage, at the expense of business as usual activity.
- 1.9 IPReg would like to amend its regulatory arrangements to have the option to serve documents and formal notices by more modern (and nowadays, business-conventional) means, such as email. This would be in addition to personal service or signed-for Royal Mail first-class postage options which would still be used where we consider it prudent to do so, or where specifically requested by individual registrants or entities. A change to the regulatory arrangements will provide consistency across the various regulations, some of which are at variance with each other and internally inconsistent.
- 1.10 The proposed amendments sought will result in changes to IPReg's Rules of Conduct for Patent Attorneys, Trade Mark Attorneys and other Regulated Persons ("Rules of Conduct") and the Patent Attorney and Trade Mark Attorney Qualification and Registration Regulations 2009 ("Qualification and Registration Regulations") and the Disciplinary Procedure Rules 2015 ("Disciplinary Procedure Rules").

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<sup>4</sup> For example the SRA who allow one month to renew practising fees

## 2. Details of existing arrangements

- 2.1 Section 275A(2)(e) of the Copyright, Designs and Patents Act 1988 (“the CDP Act”) provides that the keeper of the register may make regulations which regulate the keeping of the Patent Attorney register and the registration of persons, including provision to authorise the removal or suspension of a person’s registration. Section 275 of the CDP Act specifies that the register is to be kept by the Chartered Institute of Patent Attorneys.
- 2.2 Similarly, section 83A of the Trade Marks Act 1994 (“the TM Act”) provides that the keeper of the register may make provision to remove or suspend a person’s registration from the Trade Mark Attorney register. Section 83 of the TM Act specifies that the register is to be kept by the Institute of Trade Mark Attorneys (now the Chartered Institute of Trade Mark Attorneys).
- 2.3 The power to revoke or suspend registration of Trade Mark and Patent Attorneys was introduced pursuant to the Act sections 184 and 185 respectively. IPReg formally sought, and was granted, amendments to its regulatory arrangements to allow for the suspension of individuals for non-compliance with the annual renewal process, in February 2018.
- 2.4 Section 21 of the Legal Services Act 2007 (“the Act”) provides that the regulatory arrangements of an applicable regulatory body include its arrangements for authorising persons to carry on reserved legal activities and qualification regulations (which include any requirements which must be met in order to be authorised to carry on reserved activity).
- 2.5 The regulatory arrangements which govern the registration and renewal of registration of individual patent and trade mark attorneys are the Qualification and Registration Regulations. The Qualification and Registration Regulations set out the circumstances in which individual attorneys can be admitted to the registers. It prescribes the method by which attorney registrants can renew their registration and confirms the continuing professional development requirements set out in the Continuing Professional Development Regulations 2013.

### *Non-payment of practising certificate fees*

- 2.6 Regulation 7.4 of the Qualification and Registration Regulations provides that if a registered individual fails to pay the practising certificate fee as required for renewal of registration within two months of the renewal date (which IPReg has set as the 1<sup>st</sup> of January in each year), they shall receive notice that unless payment is made within 30 days, their name will be suspended from the register for a period of up to three months.
- 2.7 Regulation 7.5 provides that if the registrant’s name is suspended from the register in those circumstances, the suspension will be lifted upon payment of fees if payment is made within three months. If payment is not made within that timescale, their name will be removed from the register.

### *Non-compliance with CPD requirements*

- 2.8 Regulation 6.3 of the Qualification and Registration Regulations and regulation 5.3 of the CPD Regulations specify that where there has been non-compliance with CPD requirements that have not been exempted by IPReg, the Registrar may suspend the registrant from the register for up to three months. The regulations do not prescribe that a certain period must pass before the Registrar can move to suspend them, but in practice IPReg follows the same timetable as for non-payment of fees or non-compliance with PII requirements i.e. allowing two months to confirm compliance before a warning of suspension is served.

### *Non-compliance with PII requirements*

- 2.9 Rule 17 of the Rules of Conduct specifies that each registered person must ensure that their PII is

commensurate with the risk arising from their particular practice. The Rule directs that the registered person must take out and maintain a policy with a participating insurer.

- 2.10 Registrants are required by Rule 19 of the Rules of Conduct to submit information in a timely manner, as reasonably required by IPReg. Non-compliance will be dealt with under the Disciplinary Procedure Rules if appropriate.
- 2.11 Rule 7.4(c) of the Qualification and Registration Regulations allows for suspension of an attorney from the register where they have failed to provide evidence to the satisfaction of the Registrar that they have appropriate PII arrangements in place. These regulations relate only to those registrants who are sole traders (as opposed to those who are employed in industry or in private practice) or registered firms/entities and IPReg's renewal processes require them to declare that appropriate cover is in place. If evidence of this cover is asked for during the renewal process, IPReg specifies a time period in which the evidence must be provided which may in appropriate cases, be the same timetable as for payment of fees.

#### *Service of documents*

- 2.12 IPReg's regulatory arrangements set out a number of different means by which important information should be served or disclosed on a registrant.
- 2.13 Rule 3 of the Rules of Conduct provides that any notice or document that IPReg is required to serve on a registered person under the Rules of Conduct, may be "*given to them personally or sent by mail to their last known address with proof of such postage*".
- 2.14 Regulation 7.4 of the Qualification and Registration Regulations states that the Registrar "*shall notify the attorney at their business address*" they will be suspended if they do not bring themselves into compliance with renewal requirements within one month. The precise means of service is not specified.
- 2.15 The Disciplinary Procedure Rules require that documents to be served under the Disciplinary Procedure Rules, should be served "*personally, by sending via guaranteed post or other guaranteed and acknowledged delivery to the last known place of business or abode of the person to be served, or in such other manner as the Disciplinary Board may direct*". These rules also refer to documents having been "transmitted".

### **3. Details of proposed changes**

- 3.1 By this application, IPReg wishes to amend current regulatory arrangements to reduce the time in which registrants have to pay their practising fee before IPReg can notify them of the risk of suspension, and to regularise our arrangements for the service of documents and notices.
- 3.2 The core elements of the proposed changes will be:
  - 3.2.1 The Registrar of IPReg will have the power to suspend the registration of an individual attorney who fails to pay the practising certificate fee within two months of the renewal date (1 January in any given year), having received a letter one month after the renewal date warning that suspension will follow in one month if the fee remains unpaid;
  - 3.2.2 IPReg's policy in relation to suspension for failure to declare compliance with CPD and PPI arrangements will follow the same timetable as for non-payment of fees<sup>5</sup>;
  - 3.2.3 IPReg will serve documents and notices upon registrants by:
    - i. Any form of electronic communication normally used for business purposes, such as

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<sup>5</sup> Following a risk assessment; a shorter period to provide evidence may be specified

email; or

- ii. Giving them to the registrant personally; or
- iii. By sending them to the registrant's last known address using Royal Mail "Signed for 1st Class" (or equivalent product)

as it considers appropriate in any given case. More than one method of service may be used if IPReg considers it necessary or prudent to do so.

#### 4. Rationale for changes

##### *Consumer protection*

- 4.1.1 Reducing the overall time in which registrants have to confirm their compliance with IPReg's regulatory arrangements in relation to registration renewal affords greater consumer protection.
- 4.1.2 IPReg recognises that it must be fair and proportionate to registrants and to the firms that may pay their practising fees to ensure that the annual renewal window is of sufficient length to allow time to prepare their complaints data and, especially for larger firms, ensure their finance teams are able to prepare and make the necessary bulk payments.
- 4.1.3 This must be balanced though, with the need to ensure that only those that are fully compliant with their regulatory obligations are permitted to remain on the register and entitled to carry out the reserved legal activity and use the restricted title that registration affords them.
- 4.1.4 IPReg considers that the current renewal window of three months is unnecessarily long and permits registrants that are non-compliant with their obligations to retain unrestricted registration. Registrants who are non-compliant with their regulatory responsibilities pose a risk to consumers:
  - i. failure to pay registration fees in a timely manner may suggest a registrant or firm is having financial difficulties;
  - ii. failure to provide PII information may suggest a registrant or firm does not have appropriate insurance arrangements in place;
  - iii. failure to provide complaints information may suggest a registrant or firm that is seeking to conceal valid concerns about its practice;
  - iv. failure to make a CPD declaration or provide evidence about CPD undertaken may suggest a registrant who has not kept up to date on industry developments and best practice, as would be expected of a registered legal professional.
- 4.1.5 When IPReg first consulted in 2017 on the power to suspend which led to the framework currently in place, both the Chartered Institute of Trade Mark Attorneys ("CITMA") and the Chartered Institute of Patent Attorneys ("CIPA") were supportive of the proposal but queried whether the length of the proposed suspension was appropriate. CIPA asked IPReg "to consider if [three months' non-compliance followed by three months' suspension] is stringent enough" while CITMA asked whether a three-month period "in all cases is appropriate ... Whilst many cases would reach compliance within the three-month suspension period and therefore the suspension would be withdrawn, it may be more appropriate to have an initial shorter suspension period (of one or two months) which could be extended to three months if required."

4.1.6 IPReg considers that the current proposal addresses these issues, and that now that the suspension process is thoroughly embedded within IPReg’s operating procedures, it is the right time to make the changes sought.

*More effective use of regulatory resources*

4.1.7 While IPReg found that the introduction of the power to suspend registration for non-compliance did improve the rate of compliance overall, we had to expend a significant amount of time and operational resources on encouraging compliance after the renewal date.

4.1.8 Registrants could begin the renewal process from 15 December 2017 which allowed for 10 and a half weeks in which to complete the renewal process before they would receive a month’s warning of the intention to suspend registration if non-compliance was not addressed. Registrants therefore had 15 weeks to complete the process before they faced any regulatory sanction, meaning that IPReg was dealing with issues arising out of registration renewal for over a quarter of the year.

4.1.9 Although IPReg’s renewal process has not changed since it introduced its registration database and user portal, “IPReg Pro”, in 2013 IPReg continues to field queries about the process every year, even from attorneys who have been on the register for some time. A high proportion of these are dealing with queries around their categorisation<sup>6</sup> (and therefore their practice fee liability) or process-related issues. By having the renewal process open for three months, staff are having to deal with these issues at the expense of core business duties.

4.1.10 IPReg considers that by shortening the renewal period overall resulting in a more intense but focussed re-registration period, significant savings will be made in terms of staff resources and operational costs. IPReg’s small, part-time staff will be able to resume much sooner, the ‘business as usual’ regulatory activity which often has to be put on hold during the renewal process.

4.1.11 Moreover, by allowing for key communications around the registration process (and other regulatory communications) to be made by electronic means, the real cost to IPReg in printing hardcopy letters and posting them (by tracked or guaranteed delivery) will be reduced. In 2017, IPReg spent approximately £500 in sending letters to registrants in relation to their registration, including warning of suspension and suspension from the register. This was in addition to the staff time and operational loss resulting from a staff member physically going to the post office to arrange postage.

## **5. Regulatory Objectives**

5.1.1 IPReg believes that its proposals are compatible with the regulatory objectives set out in the Act.

*Protecting and promoting the public interest*

5.1.2 The proposed amendment should encourage registrants to comply with their regulatory obligations in a more timely manner, strengthening the regulatory framework within which all registered attorneys must practise.

5.1.3 By reducing the overall period within which registrants have to confirm their compliance with IPReg’s regulatory arrangements, IPReg is introducing more robust safeguards for the public. Clients and consumers will have increased confidence that all attorneys and firms on IPReg’s registers hold appropriate PII insurance and have met minimum obligations in respect of CPD,

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<sup>6</sup> That is, attorney solely undertaking corporate work, attorney in private practice, attorney not in active practice, sole trader not employing other attorneys or professionals, sole trader employing other attorneys or other professionals

and that IPReg is monitoring this in a more timely manner.

- 5.1.4 When IPReg first consulted in 2017 on the power to suspend which led to the framework currently in place, both the Chartered Institute of Trade Mark Attorneys (“CITMA”) and the Chartered Institute of Patent Attorneys (“CIPA”) were supportive of the proposal but queries whether the length of the proposed suspension was appropriate. CIPA asked IPReg “to consider if [three months’ non-compliance followed by three months’ suspension] is stringent enough” while CITMA asked whether a three-month period “in all cases is appropriate ... Whilst many cases would reach compliance within the three-month suspension period and therefore the suspension would be withdrawn, it may be more appropriate to have an initial shorter suspension period (of one or two months) which could be extended to three months if required.”
- 5.1.5 IPReg considers that the current proposal addresses these issues, and that now that the suspension process is thoroughly embedded within IPReg’s operating procedures and the registrant community are familiar with the new process, it is the right time to make the changes sought.

*Supporting the constitutional principle of the rule of law*

- 5.1.6 The impact on this objective is broadly neutral, but giving IPReg the power to take swift and proportionate action on a registrant’s registration underscores the importance of compliance with regulatory rules which are designed to protect the public.

*Improving access to justice*

- 5.1.7 The impact on this objective is neutral.

*Promoting competition in the provision of legal services*

- 5.1.8 The impact on this objective is broadly neutral, although active demonstration of regulatory compliance could be considered to be a marketable USP which promotes competition within both the registered and unregistered communities.

*Encouraging an independent, strong, diverse and effective legal profession*

- 5.1.9 The proposed change will encourage registrants to comply with their regulatory obligations in a timely manner, as consumers and the public would expect of a professional community.
- 5.1.10 Where a registered person does not comply in a timely manner and action is taken to temporarily suspend registration, the regulator can continue to work with the registered person to support them back to compliance. This will strengthen the profession, instilling in them a greater appreciation of the role and rule of law and their duties as professional lawyers.

*Increase the public’s understanding of a citizen’s legal rights and duties*

- 5.1.11 There is no impact on this objective.

*Promoting and maintaining adherence to the professional principles*

- 5.1.12 The public expect that those who are part of a regulated community are held to a higher standard of professional conduct than those who are not. This higher standard recognises the unique privilege that comes with professional status and reflects the expectations of the public that those who are regulated by IPReg act with independence and integrity, maintain proper standards of work and will serve the interests of their clients to the exclusion of their own.

5.1.13 Maintaining continuous professional development, maintaining appropriate insurance arrangements and paying the annual practising fee which funds the regulation of the profession, are all fundamental requirements of professional people. By giving the regulator the means to deprive a registrant temporarily of their right to undertake reserved legal activities when compliance with regulatory requirements is not achieved in a timely manner, serves to emphasise the importance of these fundamental professional principles and will promote and encourage adherence to those principles.

## 6. Better regulation principles

6.1.1 IPReg considers that this proposal is consistent with the better regulation principles.

### *Proportionate*

6.1.2 IPReg considers that it is proportionate to require that registrants pay the practising fee and declare compliance with other regulatory obligations within a (minimum) two-month period. This appropriately balances the expectations of consumers that all those registered with IPReg are compliant with its regulatory arrangements at all points during their registration on the one hand, with the need to provide enough time for registered individuals and firms to ensure their regulatory affairs are in order on the other.

6.1.3 IPReg is mindful that large firms in particular may need some time to compile its complaints data on which they have to report based on the previous calendar year, and for that reason would consider that anything short of a month in which to prepare this would be overly burdensome and unnecessarily stringent. However, given that IPReg has not changed its annual renewal date or its renewal process since the IPReg Pro system was introduced, it does not consider that more than one month is necessary if a firm has, as IPReg would expect, undertaken some preparation work in the lead up to the renewal period.

6.1.4 IPReg does not consider that a full month is necessary for individuals to confirm their PII arrangements, declare their CPD compliance or pay their practice fee but for the sake of consistency, proposes to allow the same amount of time for these requirements to be undertaken.

6.1.5 IPReg will continue to ensure its registration renewal process 'goes live' earlier than the renewal date, and for the 2019 practice year, proposes to open the process on 1 December 2018. Should extenuating circumstances arise which make it impossible for a registrant or firm to comply with the reduced timetable, IPReg would consider this and having considered any risk to the public interest, extend the time in which to comply if necessary to prevent unfairness.

### *Accountable*

6.1.6 An affected registrant would have the right to appeal a decision to temporarily suspend them, and so IPReg would be held to account for decisions that are made improperly or unlawfully.

### *Consistent*

6.1.7 Where the current regulatory arrangements make no reference to the time by which compliance must be achieved before notice of warning of suspension is given<sup>7</sup>, IPReg proposes to retain its policy of keeping it consistent with those that do. The granting of this application would not give rise to any inconsistency within IPReg's regulatory arrangements.

### *Targeted*

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<sup>7</sup> Such as failure to declare CPD compliance and provide PII information

- 6.1.8 The proposed amendments to the Rules have been developed specifically to target issues in the renewal process which have been identified in the previous year since IPReg obtained the power to suspend registrants for non-compliance with registration renewal. It is anticipated that these targeted changes will encourage timely compliance with the renewal process and a reduction in the resources expended by IPReg in the registration renewal process.
- 6.1.9 The power to suspend, as is currently the case, would be exercised only where the existing measures in place to secure compliance have not been successful.

#### *Transparent*

- 6.1.10 A consultation was launched on 16 August 2018, a copy of which is attached at Annexe A. The consultation was published on our website and advance notice was sent to the Approved Regulators, CIPA and CITMA.
- 6.1.11 There were two responses to this consultation, made by CIPA who supported the proposals and an individual who responded in her capacity both as an entity administrator for a registered body and as a registered patent attorney, who objected. CITMA confirmed in writing that it did not object to the proposed amendments. The responses are discussed further below.
- 6.1.12 If the rule change was to be approved, IPReg would publish this on our website to ensure that registrants were aware of the consequences of non-compliance.

## **7. Desired outcome**

- 7.1.1 The desired outcome of the proposal is primarily to better protect the public and ensure a better use of IPReg's limited resources. Reducing the time in which IPReg's registration renewal process should be completed will reduce the administrative burden on IPReg in terms of having to chase registrants to secure compliance and reducing operational cost which can be more appropriately used to carry out regulatory activity that upholds the regulatory objectives.
- 7.1.2 Monitoring of the impact of these proposals will be conducted in our usual way, using previous years' results as a measure of the impact of the proposals. The impact on consumer protection will be closely considered, and we will keep under review the extent to which the suspension period of two months achieves the anticipated safeguards.

## **8. Impact upon other regulators**

- 8.1 These proposals have no impact on any other regulator.

## **9. Implementation timetable and operational readiness**

- 9.1 Depending on the outcome of this application, IPReg would have the proposed changes in place for the 2019 renewal process. This would mean that 30-day suspension warning letters would be sent to non-compliant registrants by 1 February 2019. Any registrants who fail to comply following that warning would be suspended on 1 March 2019.

## **10. Consultation process**

- 10.1 On 16 August 2018, IPReg published a consultation paper on the proposed changes [Annexe A]. The consultation set out the existing regulatory framework and the suggested draft of the new Regulations.

#### *The responses*

- 10.2 IPReg received two responses to the proposal<sup>8</sup>.
- 10.3 The first respondent, CIPA, supports the proposed changes, stating *“CIPA fully supported the change to the regulatory arrangements introduced in 2018. CIPA supports the proposal to reduce the time allowed to pay practising fees to one month on the grounds that this will improve compliance and introduce further safeguards for clients and the public”*.
- 10.4 In relation to the proposed changes to serving documents, CIPA indicates that it is making similar changes to its current bye-laws. It notes that there will be instances where individual attorneys will want to opt out of receiving electronic communications, and that IPReg should ensure any new regulatory arrangements provide for service by other means. CIPA urges IPReg to work with registrants to ensure that the registrant’s or their firm’s IT systems do not block important communications.
- 10.5 The second respondent who is responding in her capacity as an entity administrator and as a patent attorney, objects to the proposals. It is her view that the amendments are *“premature and heavy handed [and that] IPReg should first allow sufficient time for the effect of the change in February 2018 to be assessed and for IPReg to make the necessary changes to address the acknowledged shortcomings of past annual return practices”*.
- 10.6 She feels that *“IPReg’s arrangements for completion of the 2018 annual return and fee payment were extremely poor and my complaints on the subject are documents in correspondence with IPReg and LSB. Specifically, the return reminder process started mid-December 2017, which even for the most efficient entity, allowed an insufficient number of working days for return completion, self-generation of invoices and arrangement of payment thereof by 1 January 2018.”*
- 10.7 She urges IPReg to improve its practices to facilitate compliance before applying further “aggressive powers”. She further considers that in light of IPReg’s plan to have a more streamlined annual renewal process in place by 2020<sup>9</sup>, IPReg should wait at least two years before making further changes.
- 10.8 She also disagrees with IPReg’s proposal to change how it serves documents, saying the current arrangements should be maintained. She feels that having the option to serve documents by post benefit those who like her, have particular disabilities and that serving documents by post *“highlights the importance of the communication”*.

#### *IPReg’s response*

- 10.9 IPReg considers that now is the right time to take steps to further tighten up its annual renewal processes. IPReg acknowledges that its current database through which registrants renew their registration and pay their practising fee is not as user-friendly as it might be and requires improvement. The renewal experience should be greatly enhanced following the implementation of our new IT system which we are working to have in place by Autumn 2019. Making changes now rather than waiting until the new systems is introduced, will reduce the number of changes to the renewal process which registrants will inevitably experience in the next renewal year.
- 10.10 IPReg does not agree with the second respondent that insufficient time is allowed for registrants to prepare themselves for the renewal process. IPReg’s renewal requirements and renewal date have been the same since 2013 and IPReg would expect that registrants prepare

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<sup>8</sup> CITMA indicated by email that it did not intend to provide a formal response as it had no objection to the changes.

<sup>9</sup> This is a reference to IPReg’s 2019 Business Plan in which we indicated our intention to commission a new IT system which will allow us to make significant improvements to the annual renewal process (in addition to other operational processes and registrant services)

themselves for the process well in advance of the renewal date.

- 10.11 IPReg seeks to open the renewal process as early as operationally possible (for the 2019 renewal year it is intended to be open from 1 December 2018) which allows for over two months to:
- i. pay their practising fee (and fees of those they employ in the case of sole traders employing others or registered firms/entities);
  - ii. declare they have undertaken the required number of CPD hours (this is a yes/no self-declaration and IPReg does not usually ask to see evidence of the CPD activity);
  - iii. declare whether any complaints have been made about them in the previous year;
  - iv. declare they have appropriate PII arrangements in place.<sup>10</sup>
- 10.12 IPReg does not consider that there is any benefit to waiting to make these proposed changes. If there are any, these are outweighed by the interests of consumer protection by ensuring that only those who are capable or willing to comply with their regulatory obligations are permitted to remain on the registers.
- 10.13 IPReg acknowledges that in some cases it may be disproportionate or unfair to suspend individual attorneys in cases of non-payment of practising fees or other non-compliance, and IPReg is not seeking to alter the fact that the Registrar's power to suspend is *discretionary*. Where for example, an individual registrant is relying on their firm to pay their practising fee and payment is not made, the Registrar may decide not to suspend the attorney if, in all other respects, the attorney is compliant with IPReg's rules and regulations.
- 10.14 In the case of an attorney who may have accessibility or disability issues, IPReg has always and will continue to offer any assistance it can to support them through the renewal process over and above the comprehensive written and illustrated guidance which IPReg makes available to all registrants. In the past this has included any such reasonable adjustments as may be requested such as telephone support to talk a registrant through the process while they complete it, sending hard copy letters rather than electronic communications and allowing registrants to provide information in hard copy format for IPReg to input into their IPReg Pro on their behalf. IPReg does not consider that the proposals for change outlined will prevent or preclude IPReg from offering reasonable adjustments in the future.
- 10.15 IPReg will monitor any issues that the proposed changes to service of documents may raise and will reflect on any feedback provided by the registered community and other stakeholders. We acknowledge that communication with the public and our registrants is of paramount importance and if the proposed changes result in important information not being conveyed as intended, IPReg will amend its processes to prevent further issues.
- 10.16 Accordingly, IPReg considers that the proposal strikes a fair and proportionate balance between protecting consumers and allowing attorneys and firms sufficient time to meet their compliance obligations within the parameters of their existing processes.

## 11. Submission

- 11.1 The LSB is asked to approve this application.

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<sup>10</sup> The last two requirements listed are for registered firms/entities and sole traders only

## Annexe A