

Attachment - Sunset Clause Consultation Feedback and IPReg Position

Respondent	Feedback	Position as agreed by Board
<p>Chartered Institute of Patent Attorneys</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>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</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.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</p>

	<p>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>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>basis. IPReg will publish Registrar decision-making factors 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 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 factors 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 March 2021 EDI training scheduled for IPReg Board and office will include EQIAs.</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 factors helping inform 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</p>
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<p>Chartered Institute of Trade Mark Attorneys</p>	<p>10. Agree it is an appropriate time to end the transitional arrangement of providing exemptions to JEB examinations, supporting the reasoning set out in the IPReg consultation, with one possible exception.</p> <p>Points out that there may be exceptional and legitimate circumstances where it is not possible for an individual to seek and obtain qualification before the end of the proposed 18-month notice e.g. if unemployed during that period and unable to fund the qualification.</p>	<p>10. Fully take account of this point and will be publishing decision-making guidance which recognises individual circumstances. 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.</p>

	<p>Requests that in such a circumstance IPReg would consider if flexibility/discretion can be applied, to enable individuals to seek an extension beyond this timeframe, if the reasons are found justifiable.</p> <p>It suggests any extension beyond the 18-month period is entirely at the discretion of IPReg rather than an automatic right and may mean IPReg requires further information. Any extension could be time limited and final.</p>	
<p>Individual Respondent (asked for name to be withheld)</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>Nottingham Law School, Nottingham Trent University</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.</p>	<p>12. Noted.</p> <p>13. Minimum 18 months sunset period affords opportunity to engage with a qualification cycle.</p>

	<p>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>14. Noted.</p>
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