

IPReg's requirements and guidance on continuing competence

Purpose and background

1. This document sets out our new requirements and associated guidance on continuing competence. The new continuing competence rules will be in place from 1 July 2023. We have issued this document now to help attorneys adapt to our new requirements. These move away from our current, prescriptive 'hours-based' model of continuing professional development ('CPD') to a more flexible approach of maintaining competence through regular self-evaluation and development.
2. Our current approach to maintaining competence requires all attorneys in active practice to achieve a minimum of 16 hours CPD each year in order to remain registered. Attorneys need to self-certify that they have met this requirement when renewing their annual registration. Our new requirements have removed any hours-based measures, replacing the existing approach with one that helps make sure that attorneys maintain their competence in a way that is relevant to them and their practice, whatever stage they are at in their career. It puts the responsibility for maintenance of competence on the individual attorney, each of whom will be best placed to ascertain their own development needs.

Our rules on continuing competence

3. Our rules on competence are set out in rule 2 of our Code of Conduct:
 - 2.1 You only undertake work that is within your expertise and competence.
 - 2.2 You maintain your continuing competence in accordance with *IPReg's* requirements and guidance.
 - 2.3 Those with management responsibility ensure that appropriate training and supervision arrangements are in place for those working at all levels.
4. This document expands on rule 2.2 set out above. It is mainly aimed at individual attorneys, although regulated firms and their managers will be aware of, and will need to comply with, their own obligations.

Our requirements

5. You will:
 - (a) assess, bearing in mind your existing skills and the nature of your practice, how you will maintain your competence. This means that you regularly: 1)

reflect on your professional knowledge and skills and identify any development needs; 2) plan how these needs can be addressed through appropriate activities, training and other learning; and 3) record the assessments and evaluate the activities you have undertaken in light of those assessments; and

(b) confirm to us annually that you have met these requirements and, when requested, provide to us your records or other material which demonstrates you have met these requirements.

6. We no longer set a minimum requirement of the number of hours that you should spend maintaining your competence. Instead, developing your skills, knowledge and professional standards should be a continuous process, aimed at ensuring you operate to the standards expected of you as set out in our core regulatory framework. You should reflect on the quality of your practice, plan and then complete learning and development that maintains your competence.

To whom do our requirements apply?

7. All registered patent attorneys and trade mark attorneys, including those who work part time. It also applies to attorneys who are based abroad.
8. Attorneys do not need to do learning and development while they are not in active practice or where they are on leave from work, for example, due to a period of parental leave, extended sick leave or on a sabbatical. However, where an attorney has been out of active practice for more than 12 months, we expect the attorney to undertake reflection before they return to work, identifying any training needs and addressing them so that they are competent when they return.
9. We expect firms to have appropriate systems in place to help make sure that their attorneys meet their continuing competence obligations. Removal of the prior hours-based CPD system does not mean that our approach to ensuring continuing competence is any less rigorous than previously. Those in management functions and especially those responsible for supervising and developing more junior attorneys should therefore make sure that their staff receive sufficient time and support to dedicate to meeting these requirements. Firms can do this in a wide range of ways such as integrating the attorney's continuing competence requirements into their 121s and appraisal processes or helping employees find appropriate external or internal opportunities for relevant learning and development.

What is continuing competence and why is it important?

10. When first admitted as a patent or trademark attorney, attorneys will have demonstrated their competence to practise to the required standard in their chosen field of law. However, in order to maintain the standards that are required of them, attorneys need to keep up to date their own skills, knowledge and professional

standards in areas relevant to their area of professional practice and responsibilities. They will also need to adapt to the changing needs of clients.

11. The public needs to be confident that when they consult an attorney, they are aware of any recent changes in law and practice. Due to the often highly technical and constantly evolving area of IP law, it is likely that attorneys will always need to undertake some activities in relation to **legal and technical competence** if they are to meet their obligations under our Code of Conduct.

12. The public and clients also need to be confident that attorneys understand the wider context of competence in practice. This will vary depending on the nature of the work being undertaken, the age and seniority of the attorney and their areas of practice and responsibilities. An attorney might identify training needs in areas such as:
 - **professional ethics** – development activities in this area could include, for example, understanding recent case law and principles on conflicts of interest, confidentiality, bribery or anti-money laundering;
 - **dealing appropriately with clients and third parties** – for example, being able to provide information clearly and simply and effectively managing client relationships. Effective and appropriate interpersonal skills are important when delivering services to clients, especially to those that are less sophisticated.
 - **knowledge and awareness of equality and diversity** - for example, a training need may arise in relation to equality legislation or how to make reasonable adjustments for clients or colleagues. It might also include training in respect of issues such as unconscious bias.
 - **management issues** - such as effective supervision, training on recruitment and employment law, business planning or managing an effective complaints system. It might also include activities to encourage inclusive leadership and management and the importance of ongoing learning on mental and physical wellbeing in the workplace, for example by learning about the importance of supporting staff with stress/anxiety/other poor health so that those issues do not turn into competency issues which can adversely affect the client, the attorney and the firm. These issues affect not only inclusivity (and thus also diversity) in the workplace, but also attorneys' productivity, resilience and general fitness to practise.

13. An attorney's learning and development needs can be aspirational as well, including activities to build on existing strengths or develop a whole new skill set or expanding their area of practice. An example could be identifying the desirability of training for a higher rights of audience qualification, because you received positive feedback about the quality of your advocacy and want to focus on that area of your practice.

How should you assess your competence needs?

14. At the outset of each practice year and at regular intervals thereafter, you should reflect critically on the quality and challenges of your own practice and existing skills, as well as any emerging issues, such as a change in your responsibilities. You should ask yourself what you need to do to make sure that you keep your skills and professional knowledge up to date. This reflection may also be driven during the practice year, in ways that cannot necessarily be planned in advance. Examples might be:

- the conclusion of a significant transaction where you reflect on issues such as “What went well? What did not go well? What issues did I encounter in participating in, resolving or completing the matter? Would I do things differently now if approaching a similar matter and why?”;
- your becoming aware of the introduction of a new piece of legislation that may affect your area of practice;
- your taking on a new supervisory or management role.

What sort of activities might be undertaken to maintain continuing competence?

15. We are concerned with the **outcomes** of your developmental activity rather than with the precise sorts of activities or learning that you might undertake. We are, however, clear that activities are not confined to training courses and can include a broad range of different activities that will help take forward your own development plan. You will need to consider what activities are best for you in light of your development needs and your personal learning style and preferences. We set out below, as a guide, some examples of the sorts of activities that may be appropriate:

- acquiring knowledge about a new or evolving issue in your area of practice by attending an online or in person event such as an IP related educational event organised by professional bodies such as CIPA, CITMA, Law Society or the Bar Council;
- organising or participating in in-house meetings or training, for example, to raise awareness of recent case law in a relevant IP field (patents, trademarks, copyright, designs or associated areas e.g. confidential information, licensing, competition law) or updating knowledge of practice changes and new procedures of the UK IPO, EPO, UKIPO, WIPO and foreign IP offices;
- authoring/editing articles and blogs;
- teaching, training or mentoring professional colleagues or others, or engaging with a mentor who can help you meet your professional goals;
- studying towards any of the IP certificates or other industry examinations/ qualifications;
- writing reflective notes on, or discussing formally with a colleague, a case in which you have been involved, identifying areas where you have developed or need to do further work;

- setting aside time (e.g. weekly or monthly) to complete self-study (e.g. of newsletters, law journals and blogs) to maintain an adequate and up-to-date understanding of relevant law, policy and practice;
- completing training to improve a technical legal skill such as advocacy;
- completing training to develop or strengthen other skills or attributes, such as behaving inclusively and dealing effectively with people who are vulnerable;
- taking part in initiatives run by a professional network to develop your knowledge or skills in a particular area;
- attending meetings with colleagues to discuss developments in your area(s) of practice and share knowledge and good practice.

16. While it is often the case that learning and development ‘happens on the job’, the activities we expect you to undertake to maintain competence is work undertaken over and above the normal work and professional commitments of practitioners. It would not therefore cover routine work such as giving seminars for clients on basic IP matters where the primary purpose is to obtain or retain client business, or day to day supervision of junior staff. Presenting at a seminar at a higher, more specialist level would be considered appropriate activities for attorneys, as these would usually require research into a particular area and developing public speaking skills. Likewise, mentoring a junior attorney or training junior members of a team would develop the competence of an attorney as they would be learning communication, leadership and management skills.

How should I record my CPD?

17. Once you have identified your learning and development needs, you should record them in writing, identifying the activities you will undertake to address them. You should later evaluate the outcomes against the needs to make sure they have been met. You should regularly review and update your plan. This should not be unduly burdensome as our research indicates that on the whole, attorneys are used to considering what professional development they need to undertake to provide a proper standard of service to their clients.
18. We are not prescriptive about the ways in which such information can be recorded or the amount of detail that should be included. We have prepared some simple templates, attached to the end of this document, which you can consider adopting if you wish. If you are employed by a firm, you might already have an annual appraisal or performance management process in place which you can adapt as necessary. What is important is that you can show that you have met our requirements as set out in paragraph 5 above, should we ask you to.

How will I confirm my compliance and how will IPReg monitor the position?

19. You will need to confirm to us that you are satisfied that you have met your continuing competence requirements in accordance with rule 2.2 in the Code of Conduct by completing the certification which we will request of you each year on the annual declaration. You will not need to provide your records or any evidence of CPD to us, unless we request these.
20. IPReg will undertake some random sampling during the first 18 months of the new rules being in effect. The purpose of this exercise is to understand how well the new rules are being embedded, identifying any issues that may be preventing attorneys from complying with the new rules and sharing examples of good practice more widely with the profession.
21. If an attorney is asked to submit their continuing competence records, they will be given a reasonable time to do so.
22. In the first 18 months of the new arrangements being in place, IPReg is unlikely to take enforcement or disciplinary action if it considers that an attorney has not understood the new requirements, sufficiently recorded their reflective approach to undertaking continuing competence requirements and has otherwise responded appropriately to IPReg's feedback.
23. However, failure to provide records when asked, or a clear demonstration that an attorney has refused to attempt to comply with the new arrangements may result in enforcement action being taken.

Version	Date	Author	Rationale
V1.0	24.3.23	IPReg	Submitted with LSB application
V1.1	6.4.23	SE	Included template records. Inserted transitional approach to enforcement in final section

Example template 1 – Planned activity

<p>Area for reflection</p>		
<p>Learning outcome</p> <p>What do I want to achieve by focussing on this area? How is it relevant to my practice?</p>		
<p>Planned activity to meet learning outcome</p> <p>May include more than one activity</p> <p>Record target dates if planned activity in the future</p>		<p>Date of completion</p>
<p>Evaluation</p> <p>How well did my activity achieve my desired learning outcomes? How can I use this? Do I need to take further action?</p>		

Example template 2 – Unplanned activity

Area of learning		
How did the learning arise? Why did I do this activity? What did I do to develop my understanding in this area?		Date of activity
Evaluation How can I share this new learning with others? How will it help me in the future? Is there more I could do to develop my knowledge further? If my learning arose out of a piece of work, what went right? What went wrong? How would I do things differently?		

Example template 3 – Planned or unplanned activity

Description of activity	
Why did I do this activity? What did I hope would be the benefit to me?	
When did this activity take place?	
What did I learn? How will I apply it? Can I share this learning with others?	
Do I need to do more in this or a related area? Is refresher training a good idea?	