IPReg

Review of Regulatory Arrangements: proposals for change

Post-Consultation Impact Analysis

July 2022

1 Background and Introduction

1.1 Market picture

1.1.1 Overview

1. Intellectual property rights cover trade marks, patents, copyrights and designs. The intellectual property legal profession operates across the UK, European and world markets. In 2011, the UK intellectual property market had an estimated worth of **£63.5 billion**. According to the World Intellectual Property Organisation[1] (WIPO) the UK was ranked 7th in the world in 2019 for patent and designs filing activity.

1.1.2 Regulation by IPReg and ways of practising

2. IPReg regulates trade mark and patent attorneys and their firms under the Copyright, Designs and Patents Act 1988, the Trade Marks Act 1994 and the Legal Services Act 2007.
3. These firms differ in size from single attorney firms to large plcs[2]. In terms of numbers of qualified staff practising in the firm, our firms range from sole practitioners to one firm with 128 attorneys and 4 other authorised managers.
4. In terms of firms, as of 1 December 2021, there were 247 firms registered with IPReg. This figure includes single attorney companies but does not include individual attorneys practising as a sole attorney on a self-employed basis, of which there were 123.
5. The firms take different forms, including unincorporated businesses, partnerships, limited companies, LLPs and plcs and the introduction of alternative business structures (ABSs) has led to some firms converting to ABSs in order, for example, to receive private equity investment, or to introduce new board members[3]. As at 1 December 2021, 21 per cent of IPReg's firms were ABSs.
6. As of 1 April 2021, there were 3206 registered attorneys of which: 248 were registered as both a patent and a trade mark attorney, 2,197 were registered as patent attorneys and 760 were registered as trade mark attorneys[4].
7. Attorneys practise in a number of different ways. The majority are in private practice either as part of a firm or as a sole practitioner, whereas others are in-house[5]. Attorneys in private practice, either practise in an IPReg-regulated firm

[1] Taken from the WIPO Indicators 2020 report.
[2] Size can be measured in various ways, including income/profitability, number of managers and numbers of professionally qualified staff.
[3] In its 2016 Legal Services Market Study on the legal services market, the Competition and Markets Authority stated that, *"Though the impact of ABSs on competition has so far been limited, there are signs that ABSs are adopting more innovative business models like those operated by HR consultancies."*
[4] Data taken from IPReg's website.
[5] In the 2021 Diversity Survey, which IPReg considers to be a representative sample, 78% of respondents were in private practice, 18% in-house and 8% classified themselves as "other".

or an SRA-regulated firm. Approximately 9% of attorneys registered with IPReg have a practising address outside the UK.

8. Recent developments in the market include an increasing numbers of consultants, who are self-employed or have their own companies, but who act as consultants for other firms and tend not to have their own clients.
9. In addition, from the applications received, and the responses to the Call for Evidence, IPReg has evidence of changes in approaches to charging and resourcing of firms (for example with the use of consultants and increased use of outsourced service providers).
10. IPReg is also aware that a small number of firms may be considering whether to switch regulator, for example, from the SRA to IPReg.
11. As yet, firms are not permitted to be multidisciplinary practices.

1.1.3 Clients

12. Much of the work of patent and trade mark attorneys is business to business, and the percentage of clients of a firm/sole practitioner who are individuals is smaller compared to other types of law firm, although this does of course vary from firm to firm. This was borne out by information shared on a confidential basis by a number of firms in their response to the consultation.

1.1.4 Market influences

13. Significant influences on the market for intellectual property legal services, and the manner in which legal services are provided, were discussed in the consultation paper. In particular, recent years have seen the growth of unregulated firms[6]. This in part reflects the fact that many of the services provided by trade mark and patent attorneys are not reserved legal activities[7]. In addition, Brexit has meant that some firms have lost work in Europe.

1.1.5 Equality, diversity, inclusion and belonging

14. In the fourth quarter of 2020, IPReg conducted a Diversity and Inclusion Survey. The findings from the survey were published on IPReg's website in March 2021 and the results can be found here. In particular, IPReg noted:

    - *"The number of female and attorneys with disabilities has increased [since the 2017 survey] and is now closer to the UK benchmark, whilst the diversity in ethnicity is broadly constant, albeit at or close to the benchmark. However, there is still work required to fully close the gaps,*

[6] The Competition and Markets Authority's *Review of the legal services market study in England and Wales; An assessment of the implementation and impact of the CMA's market study recommendations* noted "signs of growth in the unauthorised sector with emerging lawtech." (page 16.)

[7] However, note that section 276 of the Copyright, Designs and Patents Act 1988 prohibits the use of certain protected titles by individuals and firms unless the individual/firm is registered and section 83 of the Trade Marks Act establishes a register for "persons who act as agent for others for the purpose of applying for or obtaining the registration of trade marks."

particularly with respect to the employment of people with a disability and Black attorneys."

- *"The profession has a slightly older profile than the UK benchmark, and has a greater proportion of people who do not have a religion. However, it is broadly in line/slightly more diverse with respect to sexual orientation and transgender."*
- *"Medium/larger businesses have a slightly greater ethnic diversity."*

1.2 Background to the review

15. The background to the Regulatory Arrangements Review (the Review) was set out in the consultation paper. Key drivers for the review were:

- The strategic priority of the IPReg Board to encourage and support innovation;
- Changes in the legal services market, particularly related to patent and trade mark attorneys, due to the changes to ownership and management of law firms permitted by the Legal Services Act 2007, Brexit, globalisation, and the increased use of legal technology;
- The Competition and Markets Authority's (CMA's) Review of the legal services market study in England and Wales; An assessment of the implementation and impact of the CMA's market study recommendations. The CMA conducted a three-month review, the results of which were published on 17 December 2020, of the extent to which its recommendations in the 2016 Legal Services Market Study had been taken forward;
- Increasing competition from the unregulated sector and evidence of firms switching between regulators. The CMA's Review estimated that, "the use of for-profit unauthorised providers range from 1% to around 5.5% on aggregate, with substantially higher figures in certain areas of law"[8];
- IPReg's own assessment of the effectiveness and sustainability of its regulatory arrangements and the need to have regulatory arrangements that are, so far as possible, future-proofed against market changes and innovation, new ways of working, greater use of RegTech and Law Tech, etc.;
- The limited number of insurance providers for firms and sole practitioners, particularly for smaller firms, including those with a high percentage of non-lawyer ownership;
- The need for greater transparency in IPReg's regulatory processes;
- New ways of working which IPReg has observed in the last 3 years, such as the increase in the numbers of consultants.

[8] See section 5.38 of the Report.

16. The governing principles for the review were set out in the consultation paper. In summary, IPReg is seeking to put in place revised regulatory arrangements which:

- provide proportionate consumer protection;
- are principles-based in their approach: removing prescription and detailed rules unless evidence demonstrates necessary;
- facilitate new ways of working and new service offerings; and
- are streamlined and consistent.

17. The desired outcomes of these changes will be a reduction in the burden of regulation, greater competition, the facilitation of innovation and regulatory arrangements which are resilient to change.

18. The proposed changes will address shortcomings identified in the current arrangements which are overly-prescriptive and disproportionate in places, place unnecessary constraints on new entrants and the existing regulated community, do not reflect current ways of working and lack agility and flexibility.

19. Indicators that the Regulatory Arrangements Review will have achieved the desired outcomes will be:

- a clearer, coherent set of regulatory arrangements;
- fewer operational issues with applying our regulatory arrangements;
- a more obvious alignment between the risks posed by types of registrants and the burden of regulation on them;
- a fees framework where registrants' practice fees more accurately reflect their risk profiles;
- greater competition including new market entrants;
- innovation in the manner in which services are offered to clients;
- more streamlined processes;
- reasoned decision-making in line with published policies and processes reflecting current regulatory best practice.

1.3 Rationale and evidence to justify the level of analysis used in this IA (proportionality approach)

20. This impact assessment (IA) has been updated following the consultation to support the Board's final decisions on next steps following consultation. In undertaking this impact assessment, we have made use of the following sources of information:

- responses to IPReg's Call for Evidence;
- feedback from discussions with attorneys and firms and other stakeholders;

- registrant data - e.g., number of attorneys and firms, fee categories, etc.;
- diversity profile data, in particular from IPReg's Diversity Survey 2021;
- complaints information both from regulated persons and received by IPReg relating to professional misconduct;
- data on IPReg's disciplinary activities;
- PII claims information;
- applications data - we receive a certain amount about how firms intend to operate from their applications, their corporate structure, etc.;
- information received from H M Treasury relating to the prevention of money laundering and terrorist financing;
- responses to the consultation.

21. In certain areas, e.g., in relation to levels of holding of client money by firms and sole practitioners, we have relied on information received in discussions with firms and individuals in addition to the formal responses to the consultation. IPReg has endeavoured, in these discussions, to capture a cross-section of our regulated community.

1.4 Approach to impact assessment

22. This impact assessment addresses the potential impact (positive and negative) of the proposed changes on:

(i) the regulatory objectives[9], which includes the impact on competition and consumers; and
(ii) equality, diversity and inclusion.

23. The impact on equality, diversity and inclusion (EDI) is assessed by reference to the protected characteristics set out in section 4 of the Equality Act 2010[10]. Where specific groups are impacted (for example a sub-group of persons with a disability – such as those with a mental health condition, those with caring responsibilities, or those from a different socio-economic and/or educational background) these are also highlighted, where evidence is available. We have also commented on the impact of the changes on inclusion.

[9] Under section 28 of the Legal Services Act, IPReg is under a duty to promote the regulatory objectives. The regulatory objectives are: (1) protecting and promoting the public interest; (2) supporting the constitutional principle of the rule of law; (3) improving access to justice; (4) protecting and promoting the interests of consumers; (5) promoting competition in the provision of services within subsection (2); (6) encouraging an independent, strong, diverse and effective legal profession; (7) increasing public understanding of the citizen's legal rights and duties; and (8) promoting and maintaining adherence to the professional principles.

[10] The protected characteristics are: age, disability, gender reassignment, marriage and civil partnership, pregnancy and maternity, race, religion or belief, sex and sexual orientation.

24. The assessment also addresses the costs and benefits to registrants, clients and consumers and IPReg of the changes. The costs and benefits have not been fully quantified although IPReg is continuing to take into account all of the available information in relation to costs and benefits. We have taken into consideration the fact that the consultation process has not highlighted any proposals as necessitating significant costs either in terms of implementation or on an ongoing basis.

25. The impacts have been assessed in relation to:

(i) consumers;
(ii) IPReg's registrants (individuals and firms);
(iii) new market entrants;
(iv) IPReg and other stakeholders (e.g., other legal services regulators).

26. Where an impact might be felt most by a particular size of firm or type of registrant, this has been highlighted. The term "registrant" is used collectively for individual attorneys and sole practitioners and firms.

27. The cost and benefit impacts have been assessed in relation to:

- the overall impact of the regulatory arrangements review and
- the specific impacts of each aspect of the changes, taking the headings from the consultation and response papers.

28. The impact of the Review as a whole is set out in section 3 and the specific impacts of the various changes are set out in section 4.

1.5 Assumptions

29. In conducting this impact assessment, we have made certain assumptions. These are:

- that merely changing IPReg's guidance would not bring about the changes sought through the review;
- numbers of Registered Patent Attorneys and Registered Trade Mark Attorneys and registered firms are unlikely to rise/fall significantly, although the trend for consolidation identified in the responses to IPReg's Call for Evidence is likely to continue, as will the numbers of non-regulated firms;
- the IP market is likely to remain buoyant, although the impact of Brexit will continue to be felt;
- that additional application and supervisory costs for MDPs will be passed on to these firms, i.e., there will be no element of cross-subsidy;
- that a market which is subject to proportionate regulation will encourage consumer confidence in purchasing services and could have a positive benefit on business confidence to invest, innovate and expand;
- that a principles-based approach will allow registrants autonomy to identify and manage their own risk, giving them the time and space to

focus on their core business of serving consumers and will reduce their costs;

- a move to a more principles-based approach may facilitate switching between regulators;
- that the timetable for implementation will give registrants a reasonable period to comply with the new requirements before they come into force and that, where appropriate, there will be transitional periods (see section 3.3 regarding continuing professional development).

2 Detailed analysis – impact of Review as a whole

30. This section assesses the impacts of changing the regulatory arrangements as a whole. The following section assesses the impacts of the specific areas of change.

2.1 High-level options considered

31. In conducting the Regulatory Arrangements Review, IPReg needed to adopt a two-stage approach. In essence, this involved assessing all possible options in relation to the regulatory arrangements in the light of the drivers for change at the macro level, followed by an assessment of each area of change.

Option 0 – retain the current regulatory arrangements

32. This option would have had the benefit that firms and attorneys are familiar with the existing arrangement and there would have been no direct costs associated with any changes for those whom we regulate.

33. However, for the reasons outlined above, IPReg considered it imperative to make changes to the regulatory arrangements. We had already identified that the existing arrangements were out of date and did not reflect modern IP practice in some key areas and believe that the indirect impact on firms and attorneys of retaining the current regulatory arrangements would eventually have been significant. Indeed, some of the harms that IPReg was endeavouring to prevent were: potential constraints on new entrants caused by unjustifiable regulatory complexity, current and future obsolescence in the regulatory arrangements caused by arrangements which have not kept up with changes to the manner in which legal services are delivered, and insufficient ways for IPReg to deal with malpractice.

34. Moreover, there was support for change from amongst those whom we regulate[11], in addition to external stakeholders such as the Competition and Markets Authority.

Option 1 – revise the regulatory arrangements and associated guidance.

35. Our preferred option, and the one with which IPReg has proceeded, is Option 1. The reason for this is that none of the other options would have enabled IPReg to achieve its stated objectives for the Review.

36. In summary, the regulatory arrangements could only be made clearer and more coherent by re-drafting the provisions, as opposed to issuing further guidance. To issue further guidance without re-drafting the regulations would simply have created confusion and contradiction. Similarly, no changes could be made to our practising categories without re-drafting the regulations, facilitating the alignment of the risks posed by types of registrants, the costs to IPReg of regulating them and the fees paid by registrants.

37. By revising not only the form but also the content of regulations, we are better able to achieve consistency in the wording of the regulations, which not only benefits our regulated community but also IPReg in its supervision and discipline of regulated persons.

[11] See the Summary of Responses to IPReg's Call for Evidence.

38. Adopting a more principles-based set of regulatory arrangements will also help to remove barriers to entry into the market for legal services related to intellectual property.

Option 2 – retain the existing rules, publish revised guidance and change the approach to supervising firms and attorneys

39. IPReg considered whether it would be possible to achieve its objectives through changes to its guidance and the manner in which regulated persons will be supervised. We concluded that it was the content and drafting of the regulatory arrangements themselves which hindered the achievement of IPReg's objectives. If the arrangements remained unchanged, updated guidance would have no impact other than to create the potential for confusion and ambiguity. Amendments to the regulatory arrangements themselves were required to drive the change needed in the regulation of intellectual property professionals.

Option 3 – remove significant elements of the regulations and replace these with greater use of licence conditions

40. Another option considered was to have minimal regulations and manage the risks posed by firms through the use of licence conditions. The benefit of this option is that it is truly risk-based, since the requirements imposed on each attorney or firm would be driven by our assessment of the risks. However, we consider that this option lacks transparency, making it difficult to assess the overall burden of regulation, risks inconsistency and potential unfairness, imposes a greater burden on IPReg staff (and potentially higher fees for firms and attorneys, due to the level of supervision required for each firm and duplication of work as each firm/attorney is assessed). In addition, certain elements of our rules relating to our regulatory procedures, necessitate more detailed rules to ensure procedural fairness.

2.2 Policy objective in changing the regulatory arrangements and timing

41. Section 1 of the consultation paper set out the objectives for the Regulatory Arrangements Review. Although other changes are under consideration, post-consultation it remains IPReg's intention to implement the changes comprising the new regulatory arrangements together, rather than in stages. The exceptions to this are that certain proposals addressed in the consultation, such as diversity monitoring, are on a different timeframe, in order to allow for further consultation, and following the consultation, one proposal, relating to litigation skills, is not being taken forward at this time to allow further work to take place as part of our education work programme.

42. The rationale for implementing the changes at once is that the arrangements are changing both in content and form. In order to make the drafting changes and the move to a more consistently principles-based approach, it is necessary to review the arrangements as a whole. This will also facilitate the introduction of a glossary which will apply to all of the regulatory requirements.

43. The intention is that the new arrangements will come into effect no earlier than Spring 2023. Our final plans for implementation will be confirmed once the LSB has made its decision on our application.

2.3 Regulatory objectives

44. The impact on the regulatory objectives of the Review as a whole is considered to be positive and we believe that this has been borne out by the consultation responses.

45. RO1 - protecting and promoting the public interest – it is in the public interest that regulators have robust regulatory arrangements which reflect the current market and its consumers and are sufficiently flexible to sustain future changes in the market and permit different models of business.

46. RO2 - improving access to justice – in revising the regulatory arrangements IPReg is seeking to remove some of the current restrictions on permitted business models, thereby providing greater access to justice for consumers from a wider variety of firms.

47. RO4 - protecting and promoting the interests of consumers – the new arrangements have been drafted to protect consumers in relation to the key risks identified. The specific risks to consumers (and the benefits arising from the Review) have been considered both in the overall approach to a more principles-based approach and in relation to each of the specific proposals.

48. RO5 - promoting competition in the provision of services - in addition, the changes to IPReg's ways of working, including the greater use of waivers, facilitates new forms of business. This is because new forms of business sometimes reveal unanticipated constraints of business in regulatory arrangements; waivers facilitate the removal of these constraints.

49. With a principles-based approach, as opposed to detailed rules, there is always a risk that registrants and new market entrants do not think through, for themselves, what is required of them by the regulator. The new guidance proposed by IPReg should help to address any lack of understanding.

50. RO6 - encouraging an independent, strong, diverse and effective legal profession – the principles-based approach encourages firms to take responsibility for compliance and how this is achieved, strengthening the profession. Where more detailed rules are justified, these have been retained in order to ensure that there is clarity of understanding for firms of their duties, and that their delivery of legal services is effective. A principles-based approach facilitates also different forms of working which may have a positive impact on diversity.

51. As with other registrants, in-house lawyers will benefit from the flexibility of the more principles-based approach. However, some respondents to the consultation felt that the application of the new regulatory arrangements to in-house lawyers was unclear. As a result, IPReg has amended the introduction to the Code of Conduct to clarify its application and is considering whether guidance for in-house lawyers may be necessary.

52. RO8 - promoting and maintaining adherence to the professional principles – the emphasis of the principles-based approach is the professional principles underpinning legal work.

2.4 Costs and benefits

53. The costs and benefits associated with each aspect of change are discussed in the following section.

54. The key costs associated with the changes as a whole cover the short-term costs of implementation and the ongoing costs. From its discussions, IPReg believes that the costs to firms of a one-stage implementation, rather than introducing changes in stages, are lower. This is because the analysis suggests that firms will find it easier to assess the impact of the changes as a whole and make any necessary changes to their operations and systems and controls, rather than to experience a "drip feed" of changes over a longer period.

55. In addition, IPReg intends to reduce the impact both on firms and on itself of the changes to its regulatory processes by transitional provisions. The Board will also be considering a grace period for coming into compliance with the new provisions, in much the same way as with previous changes to the regulatory arrangements.

56. Stakeholders are of the view that legal services providers benefit from the removal of unnecessary restrictions and a principles-based approach. In responding to regulators' consultations on transparency, the Legal Services Ombudsman stated, "*It is not in the interests of the legal services market to make regulation difficult to manage or even detrimental to provision, and as such we believe it is appropriate to allow for flexibility wherever possible.*"[12]

2.5 Impact Equality, Diversity and Inclusion

57. IP Inclusive's response to IPReg's Call for Evidence, stated that, "*The more flexibility available to professionals and their employers, in determining how they comply with the high-level principles, the more likely they are to be able to accommodate and nurture a diverse and inclusive workforce.*"[13] This is because the focus is now on what should be achieved, rather than how to comply. Regulated persons can therefore consider how they comply by reference to their business model, client base, etc.

58. The principles-based approach is designed to encourage new forms of working and new models of firm. This should support those whose hours of work are non-standard, for example because of caring responsibilities and those who are moving from one stage of their career to another, for example from partnership to consultancy and also for all firms and individuals who are changing their ways of working by, for example, adopting a hybrid model of home/office working.

Sex and Gender reassignment

59. In terms of the Review as a whole, the re-drafting of the regulatory arrangements to ensure that they are gender-neutral, should have a positive impact on the basis of gender and gender reassignment.

[12] *Consultation Response Regulatory transparency measures: SRA, BSB, C LC, CILEx, IPReg*, MoF, paragraph 5.
[13] IP Inclusive's full response to the Call for Evidence is published here.

Disability

60. The removal of barriers to entry, for example through the introduction of the regulatory sandbox for those firms who are unable to obtain PII, should encourage diversity in the types of firm available. IPReg's intention is to future-proof its regulatory arrangements which should facilitate the use of RegTech[14] and LawTech[15]. New technologies can support individuals in the delivery of legal services and may positively benefit disabled persons.

All protected characteristics

61. The emphasis on principles should have a positive impact on the manner in which people within firms treat each other and their clients. This may, in turn, encourage inclusion generally, and specifically for all protected characteristics. See section 3.1 for a discussion on the impact of the introduction of the Principles.

Inclusion

62. In addition, greater clarity in the drafting of the regulatory arrangements should assist those with language difficulties.

[14] RegTech (Regulatory Technology) utilises various forms of new technology as a means of managing regulatory risk.

[15] LawTech is a term used to describe technologies that aim to assist, improve or replace traditional methods for providing and delivering legal services.

3 Detailed analysis – impact of specific proposals

63. This section assesses the impact of each area of change.

3.1 Principles

3.1.1 Background

64. IPReg's approach to regulation has always been principles-based as opposed to imposing detailed rules on registrants. Currently, the Code of Conduct contains principles-based obligations, for example, Rule 5 requires that registrants "*Regulated persons shall at all times act with integrity putting their clients' interests foremost subject to the law and any overriding duty to any Court or Tribunal.*"

65. Whilst there has always been an expectation that legal services professionals would not act in a manner that brought their profession into disrepute, recent cases such as the Beckwith case[16] have raised questions about the impact of an individual's behaviour outside of their working life on their professional standing, the extent to which such behaviour might call into question their suitability to be authorised by a legal services regulator and the potential for the line between work lives and personal lives to be blurred (for example at office social events).

66. In the last 2 years, IPReg has received complaints which related to the conduct of a registrant outside their office. In particular, IPReg has received two complaints and one self-reported matter involving allegations of inappropriate conduct towards persons of another sex or racial background, some of which occurred outside the office. This highlights the need to ensure that action can be taken by IPReg for misconduct outside of the office which may have a negative impact on the wellbeing of individuals.

3.1.2 Proposed change

67. The ethical behaviours that IPReg expects all regulated persons to uphold are now separately enshrined in the Principles.

68. The Principles very much reflect the spirit of the current Code of Conduct. The key areas of change are:

- new obligations – Principle 1 is not contained in the current Code;
- changes to the wording of the Principles as compared with the Code of Conduct – Principle 2 substitutes "act in a way that upholds confidence in the regulated profession" for "act so as to promote confidence in the intellectual property system"[17]; Principle 6 is places a more positive obligation on regulated persons than the current Rule 15 "*Regulated persons must not, in the conduct of their practice, unfairly or unlawfully discriminate against any person on grounds of race, religious belief, gender, sexual orientation, age or disability*"; and Principle 7 requires registrants to "*act in the best interests of each client" whereas Rule 5 states that registrants must "[put] their clients' interests foremost*";

[16] Beckwith v SRA [2020] EWHC 3231 (Admin).

[17] See the guidance to Rule 5 of the current Code of Conduct.

- the application of the Principles to the private lives of registrants - the present Code of Conduct states that, "*These Rules set out the standards of professional conduct and practice expected of regulated persons undertaking professional work.*"

3.1.3 Impact on the regulatory objectives

69. RO1 - Protecting and promoting the public interest – the introduction of the Principles, although broadly similar to current obligations in the Code of Conduct, should have the effect of promoting the public interest, by focusing on the ethical behaviour of registrants. This is particularly important at a time when the ethical behaviour of lawyers is coming under increased public scrutiny.

70. RO2 – supporting the constitutional principle of the rule of law – Principle 1 explicitly requires registrants to act in a way that upholds the principle of the rule of law and the proper administration of justice.

Having said that, some respondents to the consultation were of the view that the application of the Principles to their private lives either went beyond IPReg's rule-making powers or was not compatible with the Articles 8 (the Right to respect for private and family life) and 9 (the right to Freedom of thought, conscience and religion) of the European Convention on Human Rights (ECHR). This is discussed in the response to the consultation. However:

- following its consultation, IPReg has clarified the application of the Principles; the preamble to the Principles will now state that, "*These Principles set out the ethical behaviours that IPReg expects all regulated persons to uphold. This includes not only their professional life but also their private life where it is relevant to their practice as a regulated person*";
- as IPReg is itself bound by the Human Rights Act we have undertaken a review of the draft Regulatory Arrangements for compliance with the Act and specifically the application of the Principles to registrants' private lives (see section 5 of this Assessment);
- any attempt to bring disciplinary action that breached the Human Rights Act would be unlawful and could be challenged on that basis. We appreciate that this would not, in theory, prevent the initiation of disciplinary proceedings but that risk will be mitigated by the guidance which IPReg intends to issue as to the circumstances in which it intends to take action.

71. RO4 - protecting and promoting the interests of consumers – by separating the core ethical behaviours expected of registrants, IPReg is underlining the importance of those behaviours. This should have a positive influence on the protection of consumers. In addition, the wording of Principle 7 explicitly requires registrants to act in the best interests of each client.

72. RO6 - encouraging an independent, strong, diverse and effective legal profession – the new Principle 6 goes further than the existing Rule 15 by placing a more positive obligation on regulated persons. This may have a positive impact in creating more equal, diverse and inclusive workplaces. However, respondents to the consultation did raise concerns with regard to the impact of the application of this Principle in particular to registrants' private lives, which is discussed at paragraph 77 below.

73. RO8 - promoting and maintaining adherence to the professional principles – the Principles reflect the professional principles set out in section 1(3) of the LSA.

3.1.4 Costs and Benefits

74. Given that much of the substance of the Principles is already contained in the Code of Conduct, our assessment is that the additional cost of complying with the Principles is likely to be minimal. Even though the Principles apply to conduct outside of the office as this is materially relevant to their professional practice, our assessment is that this is not likely to involve further costs or administration.

75. IPReg considers that, if there were any costs, these would be outweighed by the benefits to clients and other regulated persons, of IPReg being able to take proportionate regulatory action in circumstances where a regulated person's behaviour outside of their professional practice was materially relevant to their professional practice. This is because there may be circumstances where a person's behaviour in their private life (e.g., certain types of dishonesty or physical violence) might suggest that their clients or colleagues could be at risk. In addition, some behaviour in an individual's private life might jeopardise the reputation of attorneys.

3.1.5 Impact on equality, diversity and inclusion

Religion and race

76. Respondents to the consultation have raised the concern that the application of the Principles to the whole of registrants' lives may have a negative impact on equality and diversity by deterring those, for example, who hold orthodox religious beliefs from entering or remaining in the profession. IP Inclusive, in its response to the consultation, stated: *"We are concerned that by attempting to regulate a person's approach to EDI in their private lives, IPReg might alienate some of its registrants (or indeed potential registrants). A related concern is that, if such a requirement is not universally supported, or not well understood, that may ultimately undermine the regulated community's support for the EDI agenda, both outside and within the workplace. It might thus, we believe, be counter-productive in the context of its intended effects."*

77. The extent to which the application of the Principles to an individual's private life would act as a deterrent would depend on a number of factors including the way in which the Principles are expressed to apply to attorneys' private lives (what action IPReg was able to take); guidance provided by IPReg (the circumstances in which it was likely to take disciplinary action) and the actual disciplinary action taken by IPReg (what happened in practice). Given the actions proposed by IPReg in its response to the consultation including the application of the Principles and the publication of guidance, our assessment is that the risk of the application of the Principles acting as a deterrent is extremely low. However, IPReg is planning a post-implementation review of the impact of the new regulatory arrangements (see section 4 of this Impact Assessment), and this should form part of that assessment.

Inclusion

78. Principle 6 not only places a more positive obligation on regulated persons, but also is more holistic in its approach, i.e., it is not limited to the protected characteristics. This should have a positive impact by fostering inclusion.

3.2 Client money

3.2.1 Background

79. IPReg is planning to increase the evidence it currently has about the amount of client money that firms hold. However, discussions with firms, and responses to the Call for Evidence and to the consultation suggest that levels of client money held by trade mark and patent attorneys tend to be low (generally, as a maximum, in the hundreds of thousands), the majority of client money held is in relation to fees paid in advance and client money tends to be in client account for a relatively short period of time, compared to firms of solicitors. This is one of the reasons why Intellectual Property firms could be considered to be at a lower risk than other types of law firms of being a target for money laundering.

80. Respondents to IPReg's Call for Evidence cited client money as a key area for consideration in relation to the regulatory burden on firms. Respondents felt that IPReg's client money requirements were disproportionate to the risk and increased the risk that money was paid into the wrong account due to the complexity of operating a client and office account. This was borne out by the positive responses to the changes proposed in the consultation.

81. IPReg has only once in the last eleven years received a complaint concerning the loss of client money. This is not to say that such an event has only once occurred, but rather that it has never been brought to IPReg's attention or identified through IPReg's regulatory activity. This in itself suggests that the risk to clients relating to client money are significantly lower than with other forms of law firm.

82. In addition, as stated previously, regulated firms tend to provide services to business rather than individuals because of the nature of the services. What this means is that the risk profile of these firms as a whole is lower than SRA-regulated firms, where loss of client money is a major risk.

3.2.2 Proposed change

83. Client money will be defined as:

"*money held or received by you or your firm in connection with work undertaken for a client, excluding any advance payments for costs received where the terms have been agreed*."

Payments on account (including monies in respect of disbursements) will not be considered client money where terms have been agreed with the client.

84. As an alternative to a client account, firms will be permitted to place money that would otherwise be held by registrants as client money in a third party managed account (TPMA) provided that they comply with the guidance issued by IPReg.

85. Attorneys/firms will be required to:

- keep client money safe so that it is always identifiable and is kept separate from money belonging to the firm and return it promptly to the client;
- notify IPReg if they are holding client money, i.e., the current requirement will be retained;
- inform the client of the arrangements which are in place for holding their money and what the regulatory protections are;
- notify IPReg in circumstances where client money above a prescribed amount cannot be returned to the client; and
- donate to a charity of the registered person's choice any residual balances relating to that client which are lower than the amount to be prescribed.

86. Of the ten respondents to this question[18] on the consultation, three said there would be no change in the level of client money held, one firm stated that they would cease to hold client money and four firms predicted a change in the level of client money held due to the changed definition (and, of those, three predicted a very significant drop in the amount they would hold)[19]. Some respondents felt that the requirements on client money and money to be held in TPMAs in the draft regulatory arrangements were unclear, and following the consultation, changes are being made to the requirements, to make clearer how they will apply in practice.

3.2.3 Impact on the regulatory objectives

87. RO1 - Protecting and promoting the public interest – there is a risk that changes to the definition of client money might undermine public confidence if the changes resulted in losses to clients.

88. However, such a risk seems low, given the average level of client money held by firms, the nature of the money held and the fact that client money tends to be in client account for a short period of time. In addition, although the definition is changing, money which belongs to the client (e.g., settlement monies and payments on account where terms had not been agreed with the client), will still be treated as client money, which should maintain public confidence in regulated attorneys. Also, the use of TPMAs, if they were to be adopted by IP attorneys, should strengthen public confidence, since the accounts would have to be FCA-regulated.

89. RO4 – Protecting and promoting the interests of consumers – money which belongs to the client (e.g., settlement monies) will continue to be protected. However, some money that is currently considered to belong to the client will in future be considered as the firm's money (because there is a contract between the firm and the client setting out the work which will be carried out and the client has paid for

[18] "*For regulated attorneys and firms, please tell us in confidence how much client money you hold and how that would change under the proposed definition?"*

[19] Two firms did not comment on the impact that the changed definition would have on the level of client money held.

that work (and any associated disbursements which the firm must pay)). Risks to the client may therefore be that:

- work for which the client has paid in advance will not be undertaken. If this were the case, the client would have the right to seek redress via the Legal Ombudsman and to raise the matter of the firm/attorney's conduct with IPReg; or
- disbursements payable in connection with that work will not be paid by the firm. In this case, the client may be able to make a claim on the compensation fund (if fraud or failure to account were involved), the client could seek redress via the Legal Ombudsman, or, in a case of negligence, the firm's PII policy might cover the loss.

90. RO5 – Promoting competition in the provision of services - alleviating the burden on firms in relation to client money and enabling firms to use an alternative to a client account, may help to promote competition and encourage attorneys to set up their own firms. Anecdotal evidence related to applications suggests that setting up a client account is one of the more burdensome and time-consuming aspects of starting a new firm. The option of using a TPMA, coupled with the narrower definition of client money, should help to address this.

3.2.4 Costs and Benefits

91. As explained in the consultation paper, the changes to the client money requirements should alleviate some of the current administrative burden on firms associated with the operation of a client account. This is because some firms will no longer need to operate a client account, whereas others may choose to use a TPMA. As IPReg is considering the introduction of additional requirements regarding notifications to client of the arrangements in place to protect client money, in order to mitigate the risks of the proposed changes. However, the alleviation of the burden may not be significant.

92. IPReg's assessment is that the costs associated with complying with the new requirements, both in terms of initial outlay and on an ongoing basis, are not likely to be significant.

93. Another benefit to firms of using a TPMA relates to cyber risk. One of the key areas of cyber risk to firms relates to the client account. Using a TPMA reduces the exposure of the firm to these losses.

3.2.5 Impact on equality, diversity and inclusion

Disability

94. We have some evidence that people with disabilities are more likely to be in smaller firms, since IPReg's Diversity Survey for 2021 showed that smaller businesses have a higher proportion of people with disabilities. If this is the case, then the proposed changes may indirectly benefit them as with all owners/employees of small firms.

95. We do not have any evidence which suggests this proposal will have either an adverse or a positive impact on the other protected characteristics.

Inclusion

96. In their response to the consultation document, IP Inclusive suggested that, "Anecdotally, we believe that smaller, less traditional business structures – which can facilitate more individually-tailored working arrangements – may be more suitable not only for disabled people but also for parents and other carers, for people at a later stage of their careers and for people who live further from city and town centres. To the extent that the proposed new regulatory arrangements will benefit smaller and less traditional businesses, therefore, they are also likely to have a positive impact on inclusivity for these typically less well-represented groups of people, and in turn on the diversity of the profession.

3.3 Continuing Professional Development (CPD)

3.3.1 Background

97. Currently IPReg sets a minimum number of CPD hours that must be completed by attorneys on an annual basis. Acceptable CPD activities range from personal study through to attending or presenting at seminars and conferences.

98. Until 5 June 2019, IPReg's CPD policy imposed a restriction on the number of hours of personal study that could be counted towards an attorney's CPD record in each given year. This was removed as it was considered that the 25% (that is, a limit of 4 hours per year of personal study) had the potential to create a perverse incentive to undertake CPD in areas that were not relevant to an attorney's practice, simply because they were the right type of activities and could be 'counted'. The cap on personal study also had an adverse impact on attorneys who lived outside of major cities or who had disabilities or caring responsibilities which made travel to attend in-person events more difficult.

99. Only events hosted by particular bodies (such as those provided by the statutory legal representative and regulatory bodies) are normally automatically accepted as CPD and attorneys are entitled to the number of CPD hours assigned by the organising or accrediting body. The rationale for this is IPReg considers that we may rely on the relevance and quality of event delivered by those partner bodies.

100. For other training (or in-house training), IPReg operates a process of self-certification (i.e., self-certification by the individual attorney and not the event provider). Individual attorneys must determine, bearing in mind their existing skills and the nature of their practice, the most appropriate subjects in which to undertake CPD, taking account of their responsibilities and the expectations placed upon them, using the general rule of thumb: *"What is the value to me in providing legal services to my clients?".* In such circumstances, the individual attorney determines whether the activity is one which would normally qualify as CPD as per the indicative activities list.

101. Attorneys must make an annual declaration of compliance with the CPD requirement when they renew their registration.

102. IPReg has the power to waive the CPD requirements for specific individuals.

3.3.2 Proposed change

103. The new proposals for CPD were set out in the consultation paper. In summary, the new requirements will be:

- led by the individual attorney;
- based on reflection - How can I do things better in the future?
- relevant to the practice of the attorney;
- flexible; and
- a mix of formal and informal.

104. IPReg considers that these requirements reflect current best practice and better support the real purpose of ongoing competence in an attorney's career, where the focus is less on complying with a regulatory requirement and more on reflective practice and sustained development.

105. IPReg is also considering conducting checks on CPD by requiring a random sample of attorneys to provide evidence of the CPD which they have undertaken.

3.3.3 Regulatory objectives

106. RO4 – Protecting and promoting the interests of consumers- the ongoing competence of attorneys is one of the key requirements for protecting consumers. There is a risk that in giving attorneys greater freedom to determine their CPD, attorneys will either underestimate the amount of CPD which they need to undertake or will undertake activities not appropriate for their needs. However, requiring attorneys to determine their own CPD needs in light of their own practice, will help bring about a shift in thinking about CPD and its value; no longer a regulatory box that needs to be ticked but a framework within which to think critically about their practice to the benefit of themselves and their clients.

107. Random compliance checking should assist IPReg to mitigate the risks identified and will also allow IPReg to monitor how the changes are having an impact and share best practice or learning points with the rest of the regulated community.

108. RO6 – Encouraging an independent, strong, diverse and effective legal profession - by ensuring attorneys maintain their professional knowledge and skills throughout their career. The new system will also provide flexibility which is likely to have a positive impact in relation to diversity. In addition, all firms may benefit from choosing CPD to go into niche markets, some of which may be aimed at those with protected characteristics.

109. RO8 - Promoting and maintaining adherence to the professional principles – the proposed changes to CPD may also serve to promote and maintain adherence to the professional principles defined in section 1 of the LSA, notably "*that authorised persons should maintain proper standards of work,*" and that, "*authorised persons should act in the best interests of their clients*." Maintaining competence self-evidently achieves the first of those principles and more widely helps attorneys to judge what those best interests are.

110. In its response to the consultation, CITMA highlighted the risk of "*attorneys indicating they have a very narrow training need and that as a result they do not undertake CPD. This could lead to a fall in standards*." Instead, CITMA proposed a hybrid model, "*incorporating an indicative, minimum or average number of hours alongside an output-based reflective model*." Whilst there is always a risk that self-assessment of CPD needs will be flawed, IPReg will be conducting random sampling which will test the extent to which this is a material risk. In addition, how the new requirements are working in practice should be addressed as part of the post-implementation impact assessment.

3.3.4 Costs and benefits

111. In our discussions with attorneys, we have not identified any significant costs associated with the proposed changes to CPD, although respondents to the consultation did highlight the additional administrative burden associated with adopting a reflective approach. In fact, we believe that the changes to CPD may enable attorneys to maintain their competence in a more cost-effective manner. This is because seminars and courses held on specific dates may cause interruptions to work which other forms of CPD or recorded webinars, for example, would not. In addition, certain forms of professional development may facilitate targeted learning in a specialist area of law/technical area which could prove more cost effective than generalised courses which might "tick the box" whilst not achieving the end objective of improving the quality of the legal services delivered by the attorney.

112. As these would be provided online, we do not anticipate significant costs for the attorneys providing the evidence. So far as IPReg is concerned, the costs associated with reviewing evidence of compliance would depend on the sample size.

113. In terms of the administrative burden, whilst IPReg recognises that there will be a period of adjustment, overall, we do not anticipate a material increase in administration as a result of the changes to CPD. IPReg is planning to have a transitional period of 18 to 24 months for the new CPD requirements to allow attorneys and regulated firms time to adapt to the new approach.

114. The benefits to the changes to both attorneys and to the clients they serve, are addressed above. A continuing competence framework that an attorney (or their employer) can tailor to their own individual needs should result in better engagement with ongoing learning and improved outcomes for clients.

3.3.5 Impact on equality, diversity and inclusion

115. IP Inclusive has previously stated that restricting non-interactive CPD activities can unintentionally disadvantage patent and trade mark attorneys who – for medical reasons, or in order to care for children or other dependents – work part-time, as well as those who have difficulty accessing training which involves significant travel. The proposed changes should have a positive impact on such individuals.

Sex and disability

116. We believe that the proposed changes may have a positive impact on the protected characteristics of sex and disability. This is because attorneys with caring

responsibilities or who work part-time or have disabilities will be enabled to determine for themselves the most suitable ways of maintaining their competence given their practice needs and their personal situation. Based on IPReg's 2021 diversity survey results, carers and those who work part-time were more likely to be female than male[20], hence the suggested positive impact on sex.

Disability

117. The changes to the CPD requirements will also enable individuals to learn in the way that is most effective for them. This may also assist people with mobility impairments, progressive conditions or neurodiverse attorneys and people with learning difficulties.

Belief

118. It is also possible that the proposals may assist those whose beliefs involve prayers at set times of the day or celebrating religious festivals which may interfere with set training dates.

Race

119. The proposals may also help BAME individuals and BAME-led firms choose CPD which suits their professional development.

120. We do not have any evidence which suggests this proposal will have either an adverse or a positive impact on the other protected characteristics.

3.4 Litigation skills

3.4.1 Background

121. The background to the proposed changes to litigation skills for patent attorneys was set out in the consultation paper.

122. Trade mark attorneys undertake a litigation module as part of the Nottingham Trent Trade Mark Practice Professional Certificate course, pre-qualification, and therefore upon entry on to the register they are granted the corresponding certificate. This is not the case with patent attorneys, who have to obtain the litigation certificate within 3 years of entry on to the register.

123. Unless IPReg has given the individual an extension/waiver to the 3 years requirement the individual failing to obtain the certificate within 3 years may be subject to disciplinary action.

3.4.2 Proposed change

124. In the consultation, IPReg proposed to require patent attorneys to undertake basic litigation skills training before they are admitted, as with trade mark attorneys. Having considered the responses to the consultation IPReg has decided not to propose an immediate change to the current rule. 125. On that basis, there is no impact since the requirements will remain the same.

[20] In the IPReg/Focal Point survey published in February 2021, 43 per cent of female respondents had caring responsibilities for children and 9 per cent had caring responsibilities for adults. For male respondents the figures were 29 per cent and 7 per cent respectively.

3.5. Transparency requirements

3.5.1 Background

126. The consultation paper set out the background to the proposed change.

127. In 2016, the Competition and Markets Authority made a series of recommendations following a review of legal services. Included in their recommendations were that legal services regulators should:

- *"Act to improve the quality, utility and prominence of disclosures on providers' websites in relation to price, service, redress and regulatory status.*
- *Develop and consult on an enhanced regulatory minimum level of transparency for legal services providers, supported with guidance on implementation.*
- *Introduce guidance or regulatory requirements as necessary to improve information provided on engagement such as through the client care letter."*

128. The Legal Services Board monitored the responses to the CMA report and its follow-up report on progress in 2016. On 23rd May 2019, IPReg introduced guidance on *"Improving Information for Consumers and Small Businesses"* in response to the CMA report and proposals of the LSB.

3.5.2 Proposed change

129. IPReg proposed, in the consultation, that this guidance becomes mandatory, whilst maintaining its principles-based approach. Post-consultation, IPReg's proposals have been amended to take account of feedback received and the changes are set out in the response document. In particular:

- Clients must receive "*the best available information about [registrants'] work and costs*";
- registrants will be required to provide clients with "*an account of any financial benefits, including but not limited to any commission, foreign exchange uplifts, discount or rebate received as a result of their instructions*."

3.5.3 Regulatory objectives

130. RO1 - protecting and promoting the public interest – it is in the public interest that the legal services market works as efficiently as possible. A necessary part of that is that consumers and small business are able to make informed choices when buying legal services. (Consumers and small businesses differ from larger corporate clients, because there is a far greater risk of information asymmetry between the legal services provider and the client; larger corporate clients often have their own in-house lawyers and have greater buyer power.)

131. Moreover, complaints by clients of legal services firms often relate to costs and in particular the lack of transparency[21]. Actions which lead to such complaints can undermine confidence in the legal profession.

[21] The Legal Services Ombudsman, in its *Consultation Response Regulatory transparency measures: SRA, BSB, C LC, CILEx, IPReg*, MoF stated, "*We have found that complaints about costs consistently rank within our top five areas of complaint every year. This includes 'cost information deficient' and 'costs excessive', of which the former is particularly pertinent to these measures. While the percentage of complaints about costs have*

132. RO3 - improving access to justice – the CMA identified in its work that a barrier to consumers obtaining legal advice is a lack of understanding of legal services. The greater the level of transparency in relation to the services of attorneys and the cost of those services, the more accessible those legal services are to consumers and small businesses. Whilst IPReg's transparency guidance has been in place for some time, it may be that in making these requirements mandatory, behaviours will change at a greater pace than would otherwise be the case.

133. RO4 - protecting and promoting the interests of consumers – one of the objectives in making the transparency guidance mandatory is that consumers and small businesses will be better able to make informed choices regarding the legal services which they purchase. However, some respondents to the consultation questioned whether clients did in fact want or need to know specific details and argued that clients only wanted the overall price. As noted in the response to the consultation, a number of respondents reinforced the point that IP legal services are mostly business to business and that sophisticated clients are well able to shop around and compare prices. This point is acknowledged by the Legal Services Consumer Panel (LSCP) who also note that, "*consumers who use the services of a patent or trademark attorney are more likely to shop around (44% for patent attorney clients and 50% for trade mark attorney clients compared to 29% of solicitor clients, according to our latest Tracker Survey*.[22]" However, whilst the majority of clients of registrants are businesses, and therefore more likely to be sophisticated than clients of, for example, solicitor firms, this is not true of all clients of patent and trade mark attorneys.

134. RO5 - promoting competition in the provision of services – the major objective behind the CMA's recommendations was to improve competition between legal services providers. The CMA noted that principles-based requirements, as opposed to "bright-line rules" meant that it was harder to compare the services of firms. This would tend to suggest that requiring all firms and attorneys to, for example, specify their costs in the same manner, would improve competition.

135. Whilst this may be true in one sense, IPReg is seeking to encourage innovation in, for example, the pricing of legal services, which may in itself stimulate competition amongst firms. Therefore, making the requirements mandatory whilst expressing the requirements in a principles-based manner, should achieve the objective of greater comparability (through greater transparency) without stifling price innovation.

136. Finally, since the Guidance is already in place, the risk that making the requirements mandatory will act as a barrier to entry into the market seems low.

137. RO8 - promoting and maintaining adherence to the professional principles – professional principle (a) is "*that authorised persons should act with independence and integrity*;" making the transparency guidance mandatory, supports the principle of integrity, since openness about costs is a key means by which integrity is demonstrated.

---

decreased somewhat over the past four years, they still account for around 20% of complaints to the Legal Ombudsman (LeO)."

[22] LCSP, 2021 Tracker Survey.

3.5.4 Costs and benefits

138. IPReg's guidance on transparency has been published since May 2019 and the attention of those enquiring about registration is drawn to the guidance. Although, of course, the guidance is not mandatory, IPReg already expects that the guidance is taken account of by firms in their dealings with consumers and small businesses, therefore the costs to firms that are already following the guidance should be minimal. Some respondents to the consultation believed that the requirement to provide clients with an account of any financial benefits which registrants receive was unduly burdensome and the changes to this requirement following the consultation should alleviate any burden.

139. One benefit to firms from greater transparency is that there is a substantial amount of research which shows that providing better information about price and services is likely to have commercial advantages for law firms, although some respondents to the consultation highlighted the commercial sensitivity of pricing information.

140. Consumers and small businesses should also benefit from the increased transparency that the proposed change is expected to bring. For example, greater clarity in terms of the explanation of pricing structures may assist those from a variety of educational backgrounds.

141. Greater price transparency will also assist IPReg in its supervision of firms, enabling IPReg better to understand this sector of the legal services market, for example in relation to trends in the approach to charging.

3.5.5 Equality, diversity and inclusion

Disability

142. Given the fact that IPReg already has guidance on transparency, we have not been able to identify any significant impacts (positive or negative) on diversity caused by the proposed change. However, the imposition of mandatory transparency requirements should encourage firms and attorneys to explain with greater clarity their charges, etc. This may assist those who have dyslexia or difficulties in concentrating, for whom complex client care letters and terms and conditions may be difficult to read.

Inclusion

143. Greater transparency for clients should foster a culture of inclusion; as IP Inclusive stated in its response to the consultation, "*Clearer, more straightforward, more readily comparable communications – for example about the nature and cost of services provided – will inevitably be more inclusive communications*." Such communications would, as IP Inclusive notes, specifically benefit people with learning difficulties, neurodivergent people some disabled people and those less familiar with the UK legal profession.

3.6 Practising categories including sole traders

3.6.1 Background

144. The background to the proposed change was set out in the consultation paper. IPReg has seen significant shifts in the ways in which individuals practise, which is a trend

across not just patent and trade mark attorney firms but also in SRA-regulated firms, in which IPReg-regulated attorneys practise.

145. These changes include the increased use of self-employed consultants in addition to, or as an alternative to, employees. We also have a small number of sole practitioner unincorporated firms which employ others.

146. In addition, other regulators have changed their approach to practising categories and the requirements relating to them[23].

3.6.2 Proposed changes

147. The proposed changes were set out in detail in the consultation paper. The changes were intended to ensure that the categories reflect both new ways of working and the risks associated with them. The PII requirements for the new practising categories, were intended to reflect the risks associated with them.

148. In addition, IPReg's regulatory requirements, in turn, were drafted to reflect the risks posed by the different practising categories.

149. The financial impact of the new practising categories has yet to be determined, i.e., IPReg is not consulting on the fees associated with the practising categories at this time. Any changes are not anticipated to take effect until the 2025 practising fee renewal exercise at the earliest.

150. Following the consultation, IPReg is taking comments received under consideration. Therefore, the following assessment is based on the principle of changes to the risk categories, rather than the detail of the proposals.

[23] For example, in January 2019, the SRA changed its approach to sole traders by treating the practice of a sole practitioner in the same manner as any other form of firm. Subsequently, in 2019, the SRA introduced a new category of practice for freelance solicitors. As a result of these changes, the SRA also reviewed its requirements in relation to professional indemnity insurance. A key element of the SRA's requirements related to whether a solicitor was providing services to the public or a section of the public, since this would be a significant indicator of risk.

3.6.3 Regulatory objectives

151. RO1 - Protecting and promoting the public interest – it is in the public interest that IPReg's practising categories reflect new ways of working and are, so far as possible, future-proofed. Regulators need to ensure that their regulatory arrangements reflect the realities of the market.

152. It is also in the public interest that IPReg's register clearly explains to those who search the register – consumers, other regulators, etc., - the manner in which an individual is practising.

153. RO4 – Protecting and promoting the interests of consumers by providing greater clarity as to the capacity in which an attorney is practising. The CMA's study made clear the information asymmetry between consumers and small businesses, and legal services providers. Consumers are better protected when they are in a position to make informed decisions. In addition, it is in consumer's interests that IPReg's approach to its regulatory arrangements reflects the level of risk posed by different types of registrant.

154. RO5 – Promoting competition in the provision of services and RO6 – Encouraging an independent, strong, diverse and effective legal profession. The new ways of working reflect the diversity of legal services providers. New practising categories may encourage these new ways of working whilst ensuring that the primary risk (the provision of services to the public) is mitigated.

3.6.4 Costs and benefits

155. At this stage, it is not possible to quantify the direct costs to attorneys of the changes to the practising categories. IPReg's expectation is that some individuals/ (sole practitioner) firms might benefit from any changes to practising categories, whereas others may experience a slightly higher level of fees, depending on how these practising categories are defined. However, several respondents to the consultation expressed concern about the cost implications of the proposals, particularly for sole traders and single attorney firms providing services to the public (who were placed in the highest risk category). The actual cost will be explored in depth when IPReg consults on the new fees for the practising categories, once the new categories have been set.

156. The benefits to attorneys and firms are set out above.

157. Consumers – our assessment is that there may be some impact to consumers caused by changes to the practising categories, if any increased costs were passed on to consumers. At this stage, we do not have sufficient information to be able to assess the likelihood of this happening.

158. Consumers will benefit, as explained above, from greater clarity concerning the manner in which attorneys are practising and also, potentially, from a wider range of business structures.

159. Regulators will also benefit from the greater clarity in the practising categories and the information provided on IPReg's register, for example, where they are asked to approve individuals as managers or owners of other regulated firms.

3.6.5 Impact on equality and diversity

Age, sex and disability

160. The proposed changes may have a positive impact on age, sex and disability, for example, those working part-time, those who have caring responsibilities[24], those who might want to practise as a consultant in the later stages of their career and those who have experienced barriers to more conventional forms of practice.

161. We do not have any evidence which suggests this proposal will have an adverse or a positive impact on the other protected characteristics.

Inclusion

162. The provision of more modern practising categories and clarity on the PII requirements may also benefit those in smaller/atypical practices generally, fostering inclusion.

3.7 Disciplinary policy and process

3.7.1 Background

163. Disciplinary action against attorneys and their firms is relatively rare, as is the level of complaints received by firms. Details of disciplinary action are published on IPReg's website and figures are detailed in the Annual Report.

164. Where it appears that IPReg's regulatory arrangements have been breached, the matter can be referred to the Complaint Review Committee, which then considers whether there is a prima facie case to be answered. The CRC may then:

- close the case;
- deal with it summarily; or
- refer it to a full disciplinary hearing before the Disciplinary Board.

165. On average, IPReg brings three disciplinary cases a year. In 2020, IPReg received or initiated complaints against 10 regulated persons[25], all of whom were registered attorneys or firms. Two cases were determined by the Disciplinary Board and one by the CRC. As at publication, the CRC has determined two cases. The other seven were closed because the evidence did not demonstrate a breach of any of IPReg's regulatory arrangements.

166. In the last two years, only one case related to client money, and this matter concerned a failure to account to a client for client monies.

167. Reports on IPReg's disciplinary action are published on the website.

168. There have been no appeals from IPReg's decisions to the First Tier Tribunal in the past eleven years.

[24] See the comments at paragraph 116 regarding the link between a registrant's sex and caring responsibilities.
[25] See IPReg's Annual Report for 2020, pages 10-11.

169. From the above it will be clear that, IPReg's disciplinary policy and process affects a relatively small number of attorneys/firms. Nevertheless, given the potential consequences for attorneys and firms, it is essential that these are dealt with in a manner which adheres to the principles of natural justice, complies with the legislation governing IPReg, follows best practice and is efficient.

3.7.2 Proposed changes

170. The proposed changes were set out in the consultation paper and remain unchanged as a result of the consultation. In summary:

- Disciplinary proceedings will follow a four-stage process – Internal Assessment, Case Examiner Consideration, Disciplinary Hearing, Appeal;
- Decision makers will be independent from IPReg policy-makers;
- IPReg is consulting on whether it needs the power to impose interim orders and case examiners, and have a wider range of consensual disposal options;
- Appeals of licensing and registration decisions remain unchanged, i.e., they will continue to be reviewed by the respective regulatory Board, with an appeal to an Independent Adjudicator and final appeal right to the First Tier Tribunal;
- IPReg will be publishing guidance on its decision making, indicative sanctions, and publications policy.

3.7.3 Regulatory objectives

171. RO1 - Protecting and promoting the public interest – one of the ways in which public confidence in regulation is maintained is through an efficient and effective disciplinary process. The public interest is also served by disciplinary proceedings which are demonstrably fair, since this helps to maintain confidence in regulators.

172. RO4 – Protecting and promoting the interests of consumers – the proposals will demonstrate to consumers that misconduct will be identified swiftly and addressed efficiently.

173. RO6 – Encouraging an independent, strong, diverse and effective legal profession – IPReg's proposals to widen its options in the manner in which it addresses disciplinary matters should encourage a strong and effective legal profession by increasing IPReg's enforcement options from removal and disqualification at one end of the spectrum, through to more remediation-focussed outcomes at the other.

174. IPReg's experience of investigating complaints and taking disciplinary action has shown that the current arrangements can, at times, be disproportionate and lack the flexibility an agile regulator needs to be able to target action in a consistent way. Our proposals for more options to resolve cases by mutual consent address this and allow for a more efficient and proportionate outcome focussing on remediation. Having said that, IPReg recognises that this is very much dependent on the Standard Operating Procedures and associated guidance. A post-implementation review of this Impact Assessment will be one of the means by which the impacts can be assessed.

175. RO8 - promoting and maintaining adherence to the professional principles – one of the wider objectives of disciplinary proceedings is that those whom IPReg regulates

are encouraged to adhere to the professional principles of independence and integrity, conducting work to a proper standard, maintaining client confidentiality, etc.

3.7.4 Costs and benefits

176. In its discussions on its proposals and from the responses to the consultation, IPReg has not identified any additional costs to those subject to disciplinary proceedings. In fact, having a greater number of options for disposing of matters, may mean that some matters are settled before the matter goes to a disciplinary hearing, undoubtedly providing a more cost-effective enforcement outcome.

177. IPReg's attorneys and firms as a whole may experience a small rise in costs associated with the use of appropriately trained independent external examiners but this would be dependent on the cost implications of using independent examiners and the number of disciplinary cases; as stated above, the number of cases each year is low. Such a cost would also be offset by the removal of the Complaint Review Committee model comprising three IPReg Board members who are paid for their time (and in some cases, travel) outside of their core Board duties, and an independent legal adviser, therefore there may not be any overall increase in costs.

178. There may also be additional costs to IPReg associated with the introduction of interim orders (including the costs of training decision-makers). If such a power were never to be exercised, this could be a wasted cost. However, if the need were to arise, this power may benefit consumers by enabling IPReg to act swiftly to protect clients and their interests. At this stage, it is not clear that any benefit from interim orders would outweigh the costs.

179. In general terms, however, IPReg will benefit from the ability to respond more flexibly to disciplinary proceedings. Increased efficiency in disciplinary matters should also help IPReg to use its resources more effectively. The wider range of options may also assist IPReg in dealing with cases involving other regulators, such as the SRA.

180. Finally, there is always the risk that any increase in IPReg's practice fees associated with disciplinary action will be passed on to clients of firms.

181. The benefits to those subject to disciplinary action are independence of decision-making, separating the role of IPReg Board members as policy makers from the role of enforcement decision-makers in line with best regulatory practice, increased efficiency as a result of the wider range of options available to IPReg at an earlier stage, and increased guidance to aid understanding of the disciplinary proceedings.

182. The benefit to consumers of a better enforcement process is that it is likely to be quicker overall and their concerns can be addressed at a much earlier stage in the process. More nuanced resolution powers should also be more effective at remediating poor practice than disproportionate disciplinary measures which may focus more on punishing past misconduct.

3.7.5 Impact on equality, diversity and inclusion

183. The changes to disciplinary proceedings are likely to have a positive impact on equality and diversity. For example, using external decision-makers may help to reduce unconscious bias in the disciplinary process.

Disability

184. The mental health charity, Jonathan's Voice, highlighted the potential impact on the mental health of those undergoing a disciplinary process, and this may be particularly the case with those who have a pre-existing mental health condition. We agree with Jonathan's Voice but believe that the changes to the disciplinary proceed should help to alleviate this risk. In addition, the drafting of the Standard Operating Procedures and training for those involved in the disciplinary process should further reduce this risk.

All protected characteristics

185. In addition, having a wider range of options for dealing with matters, including consensual disposal options should assist IPReg to respond fairly to attorneys whose personal circumstances may have contributed to a particular situation. This may have a positive impact on all the protected characteristics.

186. Further, additional guidance should assist those with particular vulnerabilities to go through the proceedings, provided that it is inclusive and accessible.

3.8 Multidisciplinary practices

3.8.1 Background

187. The Legal Services Act 2007 (LSA) permitted firms to have external (non-lawyer) ownership and/or management. The ability to establish Multidisciplinary Practices (MDPs) offering a variety of services, including regulated (e.g., legal, accounting, financial services) and unregulated activities, was one of the major drivers for the LSA, as it represented a significant liberalisation in the delivery of professional services in the England and Wales[26].

188. IPReg currently restricts the non-legal services of the firms which it regulates in the following ways[27]:

(i) the non-legal services offered by the firm/sole practitioner must be ancillary to the legal services; and
(ii) no firm/sole practitioner may conduct certain types of legal service such as criminal law; family or matrimonial law; conveyancing other than conveyancing of intellectual property rights; personal injury litigation.

189. These restrictions were intended to limit the types of services provided by the entity to those which IPReg had the expertise to regulate, which is permitted under the LSA, and also reflected the professional indemnity insurance available at the time.

[26] The SRA currently authorises a number of entities which would be considered to be MDPs.
[27] See Annex A of the IPReg Registered Bodies Regulations 2015 (RBRs).

190. While not a complete prohibition on other non-legal services, this creates a barrier to both potential and existing entities seeking to offer an innovative multi-disciplinary service to consumers, providing a mixture of legal and non-legal services.

3.8.2 Proposed change

191. IPReg's proposal was set out in the Consultation Paper, which was to remove the limitation on non-legal services, i.e., the rule that they be limited to those ancillary to the legal services. However, IPReg also intended to retain the current restriction which meant that it would not register a body which conducts certain activities including criminal law, family or matrimonial law, conveyancing other than conveyancing of intellectual property rights and personal injury litigation.[28]

3.8.3 Regulatory objectives

192. Allowing MDPs is likely to have the following impacts on the regulatory objectives.

193. RO4 - protecting and promoting the interests of consumers – it is very much in the interests of consumers that they have the ability to engage firms which offer their clients a variety of services (e.g., legal and accounting). This may be particularly true of smaller to mid-range clients who may benefit from cost efficiencies involved in purchasing multiple services. In addition, MDPs would be able to leverage knowledge about their client gained from one form of service, to assist in the delivery of another service (within the constraints of confidentiality obligations) and the overall quality of services to clients may improve due to the level of understanding about the client which an MDP would have from offering different services.

194. In the consultation paper IPReg highlighted a number of potential regulatory challenges for MDPs, i.e., conflicts, confidentiality and PII. This is because, for example, attorneys are required to maintain client confidentiality which may conflict with the nature of an MDP which intends to offer a "one-stop shop" to its clients in relation to various activities (e.g., legal and accounting). In addition, MDPs may have to comply with different and potentially conflicting regulatory requirements, meaning that the entity would have to determine whose rules applied to which activities. This can, to some extent, be overcome by working with other regulators to understand and address regulatory overlaps and conflicts.

195. MDPs may also face challenges in relation to the maintenance of legal professional privilege and contagion risk, i.e., the quality of its legal services may suffer due to financial issues associated with its non-legal services. These risks, however, can be assessed at the authorisation process and through supervision.

196. In relation to the legal services, as with any other firm, consumers would be protected by IPReg's compensation arrangements and one of the reasons for the introduction of the regulatory sandbox is to address the possibility that MDPs might not be able to obtain PII from the current participating insurers.

197. RO5 - promoting competition in the provision of services – permitting MDPs would open up significant opportunities for firms, which could offer a variety of services to

[28] See Regulation 3.1 of the RBRs for the full list of restricted activities.

businesses including the protection and exploitation of intellectual property, but also, for example, accounting or financial services. In our discussions with firms, it is evident that they are looking at new ways of working and new client offerings.

3.8.4 Costs and benefits

198. The costs for MDPs would include the need for additional policies, systems and controls related to managing the specific risks of being an MDP. These costs would only be borne by the MDP itself, rather than all firms.

199. IPReg currently assess the costs associated with regulating different types of firms and this would be considered as part of IPReg's annual consideration of its fees, if there were evidence to suggest that there was a significant cost differential associated with this type of firm, for example:

- a need for additional resources required for authorising new MDPs; or
- specific risks associated with a particular MDP necessitating a greater level of supervision of that firm.

200. Unlike firms authorised by the SRA or the ICAEW, MDPs authorised by IPReg intending to conduct financial services would not qualify to be exempt professional firms under Part XX of the Financial Services and Markets Act. Part XX permits firms authorised by specified regulators to conduct certain limited financial services without the need to be authorised by the Financial Conduct Authority (FCA). Therefore, such an MDP would face additional costs (i.e., the costs of being authorised by the FCA) if it were to be authorised by IPReg, that it would not have to pay if it were authorised by the SRA. If interest were shown in firms offering financial services, IPReg could consider the merits of being designated as a professional body under section 326 of the Financial Services and Markets Act 2000.

201. The benefits for firms relating to MDPs would be significant as they would encourage innovation, facilitate the offering of new services and remove a barrier to entry to the legal services market in terms of firms regulated by IPReg. This may, in particular, benefit smaller and start-up firms who may need to diversify to grow their businesses. In its consultation response, however, CIPA stated that there is no evidence that the current requirement constitutes a barrier to entry for entities and CITMA also commented that it was not aware of any demand for such a change. One alternative view to this is that the change may actually have the effect of stimulating new types of firm, which is sometimes the case with deregulation.

202. Individual attorneys may also benefit from being part of an MDP, since working as part of an MDP may enable them to learn new skills, giving them a broader career path.

203. Consumers would also benefit from the ability to engage a firm which offered a variety of services, potentially at a reduced cost compared to purchasing each of those services separately.

3.8.5 Impact on equality, diversity and inclusion

All protected characteristics

204. One respondent to the consultation suggested that permitting MDPs may have a positive impact on EDI levels in the patent and trade mark attorneys, since it enables registrants to set up more diversified types of businesses.

3.9 Professional indemnity insurance

3.9.1 Background

205. The background to this was set out in the consultation paper and includes: the hardening of the PII market and the limited options for PII for firms seeking authorisation by IPReg.

3.9.2 Proposed change

206. The proposed changes were discussed in the consultation paper. In summary, these were:

- PII is required for all those providing services to the public;
- consultants will no longer be required to have PII if they are not providing services directly to the public;
- for those ineligible for PAMIA (including those with more than 50% non-attorney ownership or are providing a broader range of services than PAMIA permit) and who are unable to get PII with a qualifying insurer – IPReg is proposing to develop a regulatory sandbox.

207. In the light of the consultation responses, IPReg has clarified its position so that eligibility for the regulatory sandbox will not be restricted to those with novel business models or that are unable to obtain PII on the MTCs. This is because IPReg considers it is important that all entities have the opportunity to trial the Sandbox, since this could mitigate the hardening of the PII market and reduce the chances of a monopoly provider in the sector. Our response to consultation sets out in detail the requirements of those seeking to take advantage of the sandbox.

3.9.3 Regulatory objectives

208. RO1 and RO5 - protecting and promoting the public interest and promoting competition in the provision of services – the regulatory sandbox will, in particular, assist firms who are ineligible to obtain PII from PAMIA whilst at the same time ensuring the protection of the public. The regulatory sandbox may also act as a stimulant to competition by removing a potential barrier to entry and supporting new forms of business, for example, MDPs.

209. RO3 – improving access to justice – the regulatory sandbox should remove a barrier to entry for firms which would be unable to obtain PII from PAMIA or who do not want cover from a participating insurer. This ultimately benefits clients by giving them a wider choice of firms from whom to receive legal services. In the case of MDPs, such firms can offer packages of services which may previously not have been available in the market.

210. RO4 - protecting and promoting the interests of consumers – where an attorney or firm provides services to the public, they will be required to have professional indemnity insurance. Those firms in the regulatory sandbox will be subject to appropriate supervision and will have to provide details of their (proposed) client base. Firms must analyse whether any gaps in their proposed insurance compared to the MTC could result in detriment to clients or former clients and the type of clients

affected (e.g., individual consumers, micro-enterprises, SMEs, large businesses), and whether it was possible to mitigate that impact. They will also be required to explain what information will be provided to clients.

211. RO6 - encouraging an independent, strong, diverse and effective legal profession – the changes will arguably strengthen the legal profession by not imposing upon them unnecessary burdens in relation to professional indemnity insurance.

3.9.4 Costs and benefits

212. For the majority of attorneys and firms the PII requirements, and therefore the associated costs, will not change. There is a possibility that any reduction in premium income for PAMIA as a result of consultants not needing MTC-compliant PII might indirectly impact other firms if PAMIA were to increase their premia for other firms. However, since any reduction in impact is likely to be small, we do not consider this to be likely.

213. As stated above, for those attorneys/firms which are no longer required to have PII, the cost of practising will be (significantly) reduced.

214. The costs of being in the regulatory sandbox are not yet known and will need to be monitored when IPReg adopts this proposal. In general terms, the anticipated costs to the firm or attorney are primarily brokers or advisory fees to assist applicants to find PII on the open market and assess whether the coverage was appropriate.

215. The key benefit of the sandbox is that firms or attorneys who may previously have been unable to obtain insurance, and therefore have been prevented from being authorised, will be able to do so. In addition, given the decision post-consultation, to enable other new firms to take advantage of the regulatory sandbox, other firms with new and innovative business models, may also benefit. This, in turn, will benefit consumers, giving them a wider choice of firms and practice models from whom to choose.

216. Firms may also benefit from the regulatory sandbox in the sense that it may be easier to switch regulator to IPReg.

217. At this stage, IPReg's assessment is that the demands on its resources due to the sandbox are unlikely to be significant, given the potentially small number of firms or attorneys to whom this would apply. In addition, if there were no interest or uptake, this would, in itself provide valuable data to IPReg about the state of the market and the appetite for new types of firm.

3.9.5 Impact on equality, diversity and inclusion

Age and sex

218. As stated above, changes which facilitate new ways of working may have a positive impact on those working part-time, those who might want to practise as a consultant in the later stages of their career and those who have experienced barriers to more conventional forms of practice. See section 3.5.5 above.

219. We do not have any evidence which suggests this proposal will have an adverse or a positive impact on the other protected characteristics.

Inclusion

220. Facilitating new ways of working or business models by trialling new approaches to PII may have a positive impact on inclusion generally.

3.10 Recognition of overseas attorneys

3.10.1 Background

221. Currently, the only qualification pathway open to applicants to the register are those set out in the Qualification and Registration Regulations which require applicants to undergo foundation and advanced examinations provided by accredited UK course providers. IPReg has no means to recognise, either in totality or in part, qualifications obtained in a non-UK jurisdiction.

3.10.2 Proposed change

222. The consultation paper set out the proposed change, i.e., IPReg will, as part of an application for admission:

- recognise an applicant's overseas qualification and authorise admission to the register with no additional pre-conditions to registration; or
- recognise an applicant's overseas qualifications but direct an applicant to take additional steps where there are substantial differences between their skills, knowledge and training when compared to those of a newly qualified attorney who qualified in the UK.

223. The draft Standard Operating Procedure set out the process in more detail.

224. The applicant will be required to provide detailed evidence in support of their application in order to demonstrate that they meet the minimum standards for competence and that they have the breadth and depth of knowledge and experience required of a newly qualified attorney who trained in the UK.

3.10.3 Regulatory objectives

225. RO1 and RO8 - protecting and promoting the public interest and promoting and maintaining adherence to the professional principles – some respondents to the consultation raised a concern that the reputation of the professions of patent and trade mark attorneys could be damaged if the checks and safeguards built in to the admission process were not sufficiently robust. IPReg is transparent about its processes for admission and, based on the draft Standard Operating Procedure, safeguards for the recognition of overseas qualifications will be proportionately robust. IPReg staff involved in the admission process are accustomed to making qualitative decisions and will be trained to ensure that the risks associated with the recognition process are sufficiently mitigated.

226. RO4 - protecting and promoting the interests of consumers – recognising the qualifications of overseas attorneys to permit them to be admitted in the UK may prove advantageous to clients, who may benefit both from their UK and their overseas expertise. Clients will be protected by the rigour of the process by which applicants' overseas qualifications are recognised.

227. RO5 - promoting competition in the provision of services – some respondents to the consultation stated that it should not be easier for overseas attorneys to be admitted than for UK attorneys. If that were the case, there would be a negative impact on competition. However, having considered the approach to admission set out in the draft regulatory arrangements, there is no ground for suggesting that this would be the case.

228. RO6 - encouraging an independent, strong, diverse and effective legal profession – the recognition of overseas qualifications should assist in enriching the diversity of the trade mark and patent attorney professions, by facilitating the process by which they can become admitted in the UK.

3.10.4 Costs and benefits

229. For individual overseas attorneys, the cost of being admitted to the register in the UK may be reduced, since their overseas qualifications may now be recognised obviating the need to undergo the full UK qualification pathway in order to be registered. This may benefit firms or other commercial organisations where the attorney is working in-house also, as it will reduce the need for study leave and allow attorneys to achieve hourly rates commensurate with their registered attorney colleagues more quickly.

230. In addition, it is possible that the number of ABS applications could drop. This is because overseas attorneys who are not Registered Foreign Lawyers, are not "authorised persons" under section 18 of the LSA. Any such person may only be a manager of, or hold an interest in, an ABS. It may be the case in future, that these individuals may instead seek to become authorised persons, in which case their firm would not need to be authorised as an ABS.

231. The cost to IPReg of admitting individuals may be increased in cases involving the recognition of overseas qualifications. At present, it is not anticipated that these will be significant, however, this will be monitored. The cost of any external assessment of an ap[plication will be borne by the applicant. This may include translation services or qualification-mapping.

3.9.5 Impact on equality, diversity and inclusion

Race

232. This protected characteristic covers race including colour, nationality, ethnic or national origin. It is expected that the recognition of overseas qualifications will have a positive impact on this protected characteristic, since it will enable those qualified overseas to pursue a career as a trade mark or patent attorney in the UK. In its response to the consultation, IP Inclusive stated, "*The ability to enter the UK Register from another country may have a particularly beneficial effect on ethnic, racial and cultural diversity.*"

Inclusion

233. Permitting the recognition of overseas qualifications to enable individuals to work in or for UK firms and UK companies or to be sole practitioners, should foster a culture of inclusivity.

4 Post-implementation impact assessment

234. IPReg intends to review its policy in relation to the proposed changes to the regulatory arrangements. This is in addition to reviews of the implementation in the following specific areas:

- CPD – towards the end of the transition period, IPReg will conduct a review of how registrants are complying with the new requirements. The results will be included in the subsequent Annual Review;
- Transparency – IPReg will gather information from various sources to assess whether registrants are meeting IPReg's requirements for cost transparency and will report on their findings;
- the Regulatory Sandbox – this will be the subject of ongoing review. An assessment will be made during 2024 of how the Sandbox is working and whether it is achieving its objectives, the results of which will be reported in the Annual Review.

235. The results of these reviews will inform the post-implementation impact assessment.

236. Taking into account:

- the proposed timeframe for implementation;
- the timing of the specific reviews referred to above; and
- consumer protection risks and the risks to the regulatory objectives

the post-implementation impact assessment will be conducted in the second half of 2025.

5 Human rights and competition law

237. The post-consultation version of the proposed regulatory arrangements have been reviewed to ensure that they comply with human rights and competition law and do not unlawfully discriminate.

6 Post-Consultation Conclusion

238. Subject to changes which it intends to make as a result of the responses to the consultation, IPReg has determined to continue with the proposals set out in the consultation paper on the basis that any impacts have been explored in the consultation process, including the means of mitigating those impacts. No evidence of unlawful discrimination has been identified either before, during or after the consultation process and the impacts are considered to be justified.

239. This is because the positives of the Review mean that it should continue. We have identified the impact that the implementation of Review may have on different groups and have taken steps to mitigate where necessary.