

EXPLANATORY MEMORANDUM

PATENTS ACT 2004 (COMMENCEMENT NO. 1 AND CONSEQUENTIAL AND TRANSITIONAL PROVISIONS) ORDER 2004

2004 No. 2177 (C.94)

1. This explanatory memorandum has been prepared by the Department of Trade and Industry and is laid before Parliament by Command of Her Majesty.

2. Description

The Order commences certain provisions of the Patents Act 2004 (c.16) (“the 2004 Act”). The commencement of those provisions has necessitated consequential amendments being made to the Patents Rules 1995 (SI 1995/2093, as amended) (“the Rules”). The Order also contains transitional provisions.

3. Matters of special interest to the Joint Committee on Statutory Instruments

None.

4. Legislative Background

The 2004 Act, which received Royal Assent on 22 July 2004, amends the principal statute on patents – the Patents Act 1977 (c.37) (“the 1977 Act”). The Rules are the main piece of secondary legislation made under the 1977 Act, and they regulate the business and procedure of the Patent Office. This Office examines patent applications and grants patents (amongst other things).

This Instrument is made under section 17 of the 2004 Act and its primary purpose is to commence certain provisions of that Act. Those provisions amend sections 120 and 123 of the 1977 Act. This Instrument also includes amendments to the Rules that are consequential on the commencement of those provisions, and transitional provisions.

5. Extent

This instrument applies to all of the United Kingdom.

The provisions of the 1977 Act and the 2004 Act extend to the Isle of Man (subject to any modification by Orders in Council – of which there have been two). The Manx government was made aware at an early stage of the provisions now contained in the 2004 Act, and are content. The changes made to the Rules by this instrument relate solely to opening hours and procedures at the UK Patent Office.

6. European Convention on Human Rights

Not applicable.

7. Policy background

The provisions of the 2004 Act that are being commenced will allow the comptroller of the Patent Office to give directions regarding the Office's hours and days of business, and to set out in directions the style and content of official forms for conducting business at the Office. These matters are currently prescribed in the Rules. Allowing them to be set out in directions provides the Patent Office with the ability to respond more quickly to its customers' needs and expectations. A further provision of the 2004 Act which is being commenced will remove the requirement for the Treasury to be consulted before fees are prescribed or advisers to the comptroller are remunerated. This is consistent with the Office's status as an executive agency and a trading fund.

The consequential changes to the Rules involve removing those matters from the Rules that are now to be given in directions, and providing for such directions to be published in the official journal issued by the Patent Office (the Patents and Designs Journal). Under the transitional provisions, those matters which are being removed from the Rules are deemed to have been given in directions under the new provisions.

These changes to the 1977 Act were broadly supported when they were included in a consultation document, in 2002, on possible changes to the patents legislation.

8. Impact

A Regulatory Impact Assessment has not been prepared for this instrument, as one was prepared for the provisions of the 2004 Act, thus covering the provisions which are now being commenced by this Order (and the consequential changes).

9. Contact

James Porter at the Patent Office (an executive agency of the Department of Trade and Industry) can answer any queries regarding the instrument.

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