

**EXPLANATORY MEMORANUM TO**  
**THE PATENTS (CONVENTION COUNTRIES) (AMENDMENT) ORDER 2013**  
**2013 No. 538**

1. This explanatory memorandum has been prepared by the Intellectual Property Office (the operating name of The Patent Office), an Executive Agency of the Department of Business Innovation and Skills and is laid before Parliament by Command of her Majesty.

**2. Purpose of the Instrument**

2.1 This instrument declares Samoa, and Vanuatu to be convention countries for the purposes of the Patents Act 1977 (c.37) (“the 1977 Act”) as amended.

**3. Matters of Special Interest to the Joint Committee on Statutory Instruments**

None

**4. Legislative Content**

4.1 This instrument is being made under section 90(1) and section 124(3) of the 1977 Act.

4.2 The purpose of this Order is to amend the Patents (Convention Countries) Order 2007 and update the list of countries that are convention countries for the purpose of section 5 of the 1977 Act. As Samoa and Vanuatu are now members of the World Trade Organisation (WTO) we are obliged, due to our own membership of the WTO, to grant them convention country status.

**5. Territorial Extent and Application**

5.1 This instrument applies to all of the United Kingdom and to the Isle of Man. It does not apply to the Channel Islands as they have their own legislation on this subject.

**6. European Convention of Human Rights**

As this instrument is subject to the negative resolution procedure and does not amend primary legislation, no statement is required.

## **7. Policy Background**

7.1 Samoa and Vanuatu became members of the WTO on 10 May 2012 and 24<sup>th</sup> August 2012 respectively. This instrument therefore amends the Patents (Convention Countries) Order 2007 to include both Samoa and Vanuatu.

7.2 For a patent application the first filing date is important under both the Paris Convention and the Agreement on Trade-Related Intellectual Property Rights (TRIPS) administered by the World Trade Organisation (WTO).

7.3 Patent applicants who have filed a patent application in Samoa or Vanuatu can now benefit from using the filing date of that application as a priority date in the UK. Such applicants now benefit from having one year to decide whether to file a patent application in the UK which claims priority from the application in Samoa or Vanuatu. Such UK patent applications will be able to claim priority under section 5 of the Patents Act 1977

### **7.4 Consolidation**

The instruments are constantly reviewed and can be amended upon the common commencement dates in April and October. On this occasion only minor amendments have been made. This is the second amendment and so it is not necessary to consolidate at this stage. An informal consolidation will, however, be available on the website of the Intellectual Property Office.

## **8. Consultation outcome**

The Department has not consulted the public on this Order. This is because the changes made by this instrument are a requirement of the United Kingdom's existing international obligations.

## **9. Guidance**

The amending Order will be published on the Intellectual Property Office website alongside the existing Orders, once it has been approved by the Privy Council.

## **10. Impact**

No impact assessment has been prepared as this Instrument has no impact on the private, voluntary or public sectors.

## **11. Regulating small businesses**

11.1 The changes have no direct impact on UK business.

## **12. Monitoring and Review**

12.1 We now meet our international obligations to grant reciprocity for first filing date for patent applicants.

12.2 The review and updating of our Orders in Council to grant this reciprocity to new accession States is continuous.

## **13. Contact**

Linda Taylor at the Intellectual Property Office (the operating name of The Patent Office), an executive agency of the Department of Business, Innovation and Skills can answer any queries regarding the instrument.

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