

Transposition note for Regulation (EU) No 1257/2012 of the European Parliament and of the Council of 17 December 2012 implementing enhanced cooperation in the area of the creation of unitary patent protection (“the Regulation”)

The Regulation creates a new European patent with unitary effect (“Unitary Patent”), which is a single patent covering the territory of multiple Member States participating in the enhanced cooperation procedure. It sets out how the Unitary Patent takes effect, and the protection conferred on it. It also provides for the European Patent Office to be given certain administrative tasks, and determines how renewal fees are to be set and distributed. The Regulation will apply upon the entry into force of the Unified Patent Court Agreement (“UPC Agreement”).

As an EU Regulation, the Regulation is directly effective from its date of application. However, there are provisions within the Regulation which place obligations on the Member States participating in enhanced cooperation, or which require some measure of recognition in national law.

The relevant provisions will be implemented in UK law by the Patents (European Patent with Unitary Effect and Unified Patent Court) Order 2016 (“the Order”), which will amend the Patents Act 1977 (“the Patents Act”).

Article of the Regulation	Objectives	Implementation in the Order	Responsibility (Secretary of State if not specified)
Article 4(2)	Requires that participating Member States ensure that a European patent is deemed not to have taken effect as a national patent in their territory when it becomes a Unitary Patent	Article 2(5)(c) of the Order inserts section 77(10) to the Patents Act, which provides the necessary effect.	
Article 5(3)	Sets out that the rights conferred to a Unitary Patent, and the exceptions to those rights, shall be defined by the relevant national law which is applied to Unitary Patents through	These rights are already present in UK law, as set out in section 60 of the Patents Act except for two new exceptions. Article 2(3) of the Order inserts section 60(5)(j)-(k) to the Patents Act, which	

	Article 7.	contain the exceptions that are not currently part of UK law.	
Article 7	Sets out that Unitary Patents, as objects of property, are treated in the same way as a national patent of a particular Member State in accordance with given criteria.	Whilst no transposition or national implementation of this provision is required, the Order acknowledges its effect by referencing Article 7 in paragraph 1(b) of Schedule A3, as inserted by Article 2(10).	
Article 9(1), 9(2)	Requires that Member States give the European Patent Office certain administrative tasks connected with the Unitary Patent, including maintaining a register of Unitary Patents. Member States are required to establish a special committee to ensure this is done, as well as to agree renewal fees for the Unitary Patent and how those fees are to be distributed.	No transposition is required, as this relates to the responsibility of the UK under the European Patent Convention. However, the Order recognises the effect of this in paragraphs 4(4)-(7) of Schedule A3, as inserted by Article 2(10), which account for the European Patent Office being responsible for maintaining the register of Unitary Patents.	
Article 9(3)	Requires Member States to ensure that the decisions of the European Patent Office on matters set out in Article 9(1) can be appealed before a competent court.	This forms part of the competence of the Unified Patent Court under Article 32(1)(i) of the UPC Agreement. Article 2(10) of the Order inserts paragraphs 1 and 5(a) of Schedule A4, which state that the Unified	

		Patent Court holds exclusive jurisdiction over the actions listed in Article 32(1) of the UPC Agreement, including 32(1)(i).	
Article 17	Requires Member States to inform the European Commission of measures taken to fulfil the obligations in Articles 4(2) and 9.	No transposition is required.	
Article 18	<p>Sets out entry into force and application requirements, including that the Regulation will apply at the entry into force of the UPC Agreement.</p> <p>Requires Member States to inform the Commission when they have ratified the UPC Agreement, and to have the measures in Articles 4(2) and 9 in place before the Regulation applies.</p>	No transposition is required; however, the Order links its own entry into force to that of the UPC Agreement in Article 1(2).	