

EXPLANATORY MEMORANDUM TO
THE JUDICIAL APPOINTMENTS AND DISCIPLINE (ADDITION OF OFFICE)
ORDER 2014

2014 No. 2040

1. This explanatory memorandum has been prepared by the Ministry of Justice and is laid before Parliament by Command of Her Majesty.

This memorandum contains information for the Joint Committee on Statutory Instruments.

2. **Purpose of the instrument**

- 2.1 Section 10(2) of the Intellectual Property Act 2014 inserts new section 27A in the Registered Designs Act 1949, under which the Lord Chancellor appoints an “Appointed Person” to hear appeals against decisions of the Intellectual Property Office (IPO) in relation to design rights.

- 2.2 This instrument adds the office of “Appointed Person” to Schedule 14 of the Constitutional Reform Act 2005 (CRA), which will allow the Judicial Appointments Commission (JAC) to both undertake the selection process on the Lord Chancellor’s behalf and make recommendations for appointment to him.

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

- 3.1 Whilst the majority of the Intellectual Property Act 2014 will be commenced in April 2015, those parts of s.10(2) of the Act that enable the appointment of an Appointed Person who meets the eligibility criteria have already been commenced by The Intellectual Property Act 2014 (Commencement No.1) Order 2014 (S.I. 2014/1715).

4. **Legislative Context**

- 4.1 Section 27A of the Registered Designs Act 1949, as inserted by section 10(2) of the Intellectual Property Act 2014, provides new routes of appeal against decisions made by the IPO relating to design rights. It offers those involved a choice of using either a person appointed by the Lord Chancellor (Appointed Person) or the court, and reflects the system already in place for challenging trade mark decisions of the IPO.

- 4.2 This Order amends Schedule 14 of the CRA to include Appointed Person in the list of those offices for which the JAC can undertake the recruitment process on behalf of the Lord Chancellor.

5. Territorial Extent and Application

5.1 This instrument applies to all of the United Kingdom.

6. European Convention on Human Rights

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

7. Policy background

7.1 The Intellectual Property Act 2014 modernises intellectual property law to help UK businesses better protect their intellectual property rights in the UK and abroad. The provisions all aim to support business in driving economic growth, encourage innovation and expand the range of economic sectors in the UK. The Intellectual Property Act 2014 also implements the reforms to the design framework which flow from the *Hargreaves Review of Intellectual Property and Growth* (<http://www.ipo.gov.uk/ipreview.htm>) in 2011 and subsequent consultation, *Reform of the UK Designs Legal Framework* (2012) (<http://www.ipo.gov.uk/consult-2012-designs.pdf>).

7.2 The Appointed Person will offer users a quicker, more informal and low-cost alternative to the courts. Although a user may choose to appeal to the appointed person, it is possible, for example where the issue is of general legal importance, for the appointed person to refer the appeal to the court. The Appointed Persons role offers a lighter-touch approach but needs to be backed by technical expertise to be fully effective.

7.3 To ensure consistency with the pre-existing process for the Trade Marks Appointed Persons, and so there is a degree of visible independence from the IPO, the Government intends that the JAC undertake the appointments process for the role of Appointed Person for designs on behalf of the Lord Chancellor.

8. Consultation outcome

8.1 The respondents to the *Reform of the UK Designs Legal Framework* consultation confirmed that the existing mechanism for appealing against designs decisions of the IPO (RDAT), which offered a single route of appeal and without the possibility of further appeal, did not offer the flexibility users may require. They agreed that the Appointed Person, which was already well used in relation to trade mark cases, would provide a suitable low cost appeal route, with the court offering an alternative, should further appeals be required. This legislation gives effect to these proposals. See <http://www.ipo.gov.uk/response-2012-designs.pdf>, page 25.

9. Guidance

9.1 The Government does not intend to produce specific guidance in relation to this Order due to its specific nature and limited effect. However, the IPO will be consulting on

the operation of the new design rights appeals system ahead of full commencement in April 2015. It will also issue guidance on the new system once it is in place.

10. Impact

10.1 There is no impact on business, charities or voluntary bodies.

10.2 There is no impact on the public sector.

10.3 An Impact Assessment has not been prepared specifically for this instrument. An Impact Assessment for the Intellectual Property Act 2014 is available online <http://www.ipo.gov.uk/consult-ia-bis0373.pdf>

11. Regulating small business

11.1 The legislation does not apply to small business.

12. Monitoring & review

12.1 The impact of this particular order will not be monitored as it has no impact itself. The IPO will be consulting on the operation of the new appeals system ahead of full commencement of s.10(2) in April 2015. It will also issue guidance on the new system once it is in place.

13. Contact

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