
EXPLANATORY NOTE

(This note is not part of the Rules)

These Rules replace rule 19 of the Patents Rules 2007 ([S.I. 2007/3291](#), amended by [S.I. 2011/2052](#); there are other amending instruments but none is relevant) (the “Patents Rules”).

New rule 19 of the Patents Rules governs procedure for filing a new application for a patent out of material contained in an earlier application such that the new application is treated as having the same date of filing as the earlier application under section 15(9) of the Patents Act 1977 (c.37; section 15 was substituted by [S.I. 2004/2357](#)). Such new applications are commonly known as “divisional applications”.

In all cases, a divisional application may only be made before the earlier application has been granted, terminated or withdrawn (see section 15(9) of the Patents Act 1977 and new rule 19(2) of the Patents Rules). The deadline for filing a divisional application is further influenced by whether the earlier application has been found to meet the requirements for the grant of a patent under the Patents Act 1977.

Where an earlier application has not been found to meet the requirements for the grant of a patent, the deadline for filing a divisional application is the date three months before the compliance date of the earlier application (see rule 2(1) (for the meaning of “compliance date”) and new rule 19(3) of the Patents Rules).

Where an earlier application has been found to meet the requirements for the grant of a patent, the deadline for filing a divisional application depends upon whether the earlier application was found to meet the requirements for grant after one examination or more than one examination under section 18 of the Patents Act 1977 (section 18 was amended by the Copyright, Designs and Patents Act [1988 \(c.48\)](#), Schedule 5, paragraph 4 and [S.I. 2004/2357](#)).

If the earlier application was found to meet the requirements for the grant of a patent after one examination, a period of two months is available for filing a divisional application following notification to the applicant of the successful examination. If the earlier application was found to meet the requirements for grant after more than one examination, that period does not apply and a divisional application cannot be filed once the applicant has been notified that the earlier application complies with the requirements of the Patents Act 1977 and the Patents Rules (see new rule 19(4) of the Patents Rules).

A full impact assessment has not been produced for this instrument as no, or no significant, impact on the private, voluntary or public sectors is foreseen.