STATUTORY INSTRUMENTS

2016 No. 388

PATENTS

The Patents (European Patent with Unitary Effect and Unified Patent Court) Order 2016 (revoked)[F1]

Made - - - - 12th March 2016

Coming into force in accordance with Article 1(2)

[F1] . . . . . .

F1 Order revoked (12.4.2021) by The Patents (European Patent with Unitary Effect and Unified Patent Court) (Repeal and Revocation) Regulations 2021 (S.I. 2021/355), reg. 1(2), **Sch. para. 2**

PROSPECTIVE

Citation, commencement and extent

[F1]**1.** . . . . . .

PROSPECTIVE

Amendments to the Patents Act 1977

[F1]**2.** . . . . . .

PROSPECTIVE

Transitional Provision

[F1]**3.** . . . . . .

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EXPLANATORY NOTE

(This note is not part of the Order)

This Order makes provision to give effect to European Union legislation in relation to the European patent with unitary effect and to an international agreement on the Unified Patent Court.

The European Parliament and the Council adopted Regulation (EU) No 1257/2012 of 17 December 2012 implementing enhanced cooperation in the area of the creation of unitary patent protection ("the Unitary Patent Regulation") (OJ No L 361, 31.12.2012, p1). The Council also adopted Council Regulation (EU) No 1260/2012 of 17 December 2012 implementing enhanced cooperation in the area of the creation of unitary patent protection with regard to applicable translation arrangements (OJ No L 361, 31.12.2012, p89) which does not require any changes to be made to the law of the United Kingdom. A number of member States of the European Union signed an international agreement on 19 February 2013 on a unified patent court (Cm 8653) ("the Agreement on a Unified Patent Court").

The Order comes into force on the date of entry into force of the Agreement on the Unified Patent Court (Article 1(2)). The Order will extend only to the United Kingdom and not the Isle of Man (Article 1(3)). A separate Order will be made under section 132(2) of the Patents Act 1977 ("the Act") in relation to the Isle of Man.

Article 2 amends the Act. Article 2(3) implements provisions on infringement in the Agreement on the Unified Patent Court. Article 2(3) inserts two new exceptions to infringement in section 60(5) of the Act. These relate to plant breeding and computer programs respectively. As regards plant breeding, the exception to infringement applies to the European patent with unitary effect, the European patent (UK) and national patents. As regards computer programs, the exception to infringement applies to the European patent with unitary effect and the European patent (UK), but does not apply to national patents. This is made clear in the amendment made by Article 2(4). In all other respects, the infringement provisions apply to the European patent with unitary effect, the European patent (UK) and to national patents.

Article 2(5)(c) amends section 77 of the Act to make clear that once unitary effect for a European patent (UK) is registered in the Register for unitary patent protection, that patent no longer has effect in the UK as a national patent and is to be treated as never having had effect as a national patent.

Article 2(6) inserts a new section 83A in the Act which inserts two new Schedules, A3 and A4, to the Act which deal respectively with the application of the Act in relation to the European patent with unitary effect, and the jurisdiction of the Unified Patent Court in relation to the European patent (UK) and the European patent with unitary effect.

Paragraph 2 of Schedule A3 applies certain provisions of the Act which relate to the European patent (UK) to the European patent with unitary effect, subject to certain modifications set out in paragraph 4.

In particular, the following provisions of the Act are applied to the European patent with unitary effect with modifications where appropriate:

- The provisions on compulsory licences (sections 48 to 54) and on use of patented inventions for the services of the Crown (sections 55 to 59)
- Section 60 (meaning of infringement) with the modifications set out in paragraph 4(10)
- The right in section 64 to continue use of an invention where such use began before the priority date