EXPLANATORY MEMORANDUM TO

THE APPOINTED PERSON (DESIGN) RULES 2015

2015 No. 169

1. 1.1 This explanatory memorandum has been prepared by the Intellectual Property Office, an Executive Agency of the Department for Business, Innovation and Skills 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 This instrument sets out the processes for appealing to the 'Appointed Person' against decisions relating to UK designs made by the Intellectual Property Office (IPO). This new appeals process arises from section 10 of the Intellectual Property Act 2014 (IP Act), which introduces options to appeal either to the High Court or to the 'Appointed Person'.

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

3.1 None.

4. Legislative Context

4.1 Section 10 of the IP Act introduces changes to the existing route of appeal against design decisions of the IPO under the Registered Designs Act 1949, in relation to registered designs, and the Copyright, Designs and Patents Act 1949, in relation to unregistered design rights. It allows appellants to choose between the High Court or a suitably qualified person appointed by the Lord Chancellor (the Appointed Person). It also repeals section 28 of the Registered Designs Act 1949, which makes provision for the Registered Designs Appeal Tribunal (RDAT).

4.2 Section 10(2) was commenced in July 2014, only to the extent necessary to allow for the recruitment and appointment of the Appointed Person[1].

5. Territorial Extent and Application

5.1 This instrument applies to the UK.

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

[1] http://www.legislation.gov.uk/uksi/2014/1715/contents/made

- ***What is being done and why***

7.1 The changes to the route of appeal build on a previous decision to abolish the existing tribunal RDAT[2], which offered no appeal against its decisions and was considered outdated. The new appeal routes offer appellants a choice between the flexibility of the High Court, which offers opportunities for further appeals, or a less formal, less expensive appeal to the Appointed Person, which offers a more speedy final decision, but without further appeal.

7.2 This new appeals route to the Appointed Person reflects similar existing rules governing appeals against decisions of the IPO which relate to trade marks.

8. Consultation outcome

8.1 The IPO ran a public consultation[3] from July to October 2012 to seek views on a number of measures intended to improve the contribution of the design Intellectual Property system to UK economic growth and to inform decisions on legislative and other action in these areas.

8.2 In the consultation the Government set out a proposal to make changes to the route of appeal for both registered and unregistered design decisions of the IPO. The majority of respondents agreed with the proposal to introduce more flexibility to the appeal system.

8.3 A further consultation on the detailed implementation was carried out in November 2014. The wording of the rules has been amended, where appropriate, to take account of the comments received.

9. Guidance

9.1 Business guidance has previously been published on the changes introduced by the IP Act including those relating to the designs appeal route. Further guidance on how to appeal will be published alongside new forms on the official website.

10. Impact

10.1 The impacts were considered in impact assessments (IA) prepared for the IP Act[4]. Copies of the relevant IAs are attached. One IA relates to detail specific to this instrument, and was submitted along with other IAs, under cover of the overarching IA (which relates to the IP Act and was signed by the Minister responsible).

10.2 The costs and benefits have been revisited as a result of the recent consultation and are still accurate.

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2 see http://www.legislation.gov.uk/ukpga/2007/15/contents, specifically section 143, which has not been enacted. Existing Section 28, RDA will be repealed when section 10, IP Act is fully commenced.

3 http://webarchive.nationalarchives.gov.uk/20140603093549/http://www.ipo.gov.uk/pro-policy/consult/consult-closed/consult-closed-2012/consult-2012-designs.htm

4 http://services.parliament.uk/bills/2013-14/intellectualproperty/documents.html

10.3 The impact on users, business, legal professionals and government was estimated to be minimal because of the likely low number of appeal cases, and because this does not introduce new requirements but replaces (and improves) an existing system.

11. Regulating small business

11.1 The legislation applies to small business. It is intended to be beneficial to small businesses by enabling them to select a method of appealing against the IPO's design decisions which best suits their needs.

12. Monitoring & review

12.1 The IPO is in the process of developing an evaluation strategy for all legislation for which it has responsibility. This instrument will be included within that, which requires evaluation to be carried out within 5 years of implementation. For this instrument, this means 2020.

13. Contact

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