EXPLANATORY MEMORANDUM TO

THE PATENTS (ISLE OF MAN) (AMENDMENT) (EU EXIT) ORDER 2019

2019 No. 1327

1. Introduction

1.1 This explanatory memorandum has been prepared by the Intellectual Property Office, an Executive Agency of the Department for Business, Energy and Industrial Strategy, and is laid before Parliament by Command of Her Majesty.

2. Purpose of the instrument

2.1 This instrument amends the Patents (Isle of Man) Order 2013 ("the Isle of Man Order"), and thereby modifies the Patents Act 1977 (c.37) as it applies to the Isle of Man.

2.2 The instrument extends amendments that have been made to the Patents Act 1977 to the Isle of Man. Those amendments dealt with failures of retained EU law to operate effectively as a result of the UK's withdrawal from the European Union.

3. Matters of special interest to Parliament

Matters of special interest to the Joint Committee on Statutory Instruments

3.1 None.

Matters relevant to Standing Orders Nos. 83P and 83T of the Standing Orders of the House of Commons relating to Public Business (English Votes for English Laws)

3.2 As the instrument is subject to negative resolution procedure there are no matters relevant to Standing Orders Nos. 83P and 83T of the Standing Orders of the House of Commons relating to Public Business at this stage.

4. Extent and Territorial Application

4.1 The territorial extent of this instrument is the Isle of Man.

4.2 The territorial application of this instrument is the Isle of Man.

5. European Convention on Human Rights

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

6. Legislative Context

6.1 The Patents Act 1977 and the Patents Rules 2007 are the principal legislation governing the patents system in the UK and give the Comptroller-General of Patents, Trade Marks and Designs certain powers and duties relating to its operation.

6.2 Under Section 132(2) of the Patents Act 1977, the provisions of that Act extend to the Isle of Man, subject to any modifications made by Order in Council. This means that patents granted with effect in the UK also take effect in the Isle of Man.

6.3 The Patents (Amendment) (EU Exit) Regulations 2019 (SI 2019/801; "the 2019 UK Regulations"), which were made on 4 April 2019, amend the Patents Act and Patents Rules, along with other retained EU law, to resolve inoperabilities arising from the withdrawal of the United Kingdom from the European Union. The 2019 UK Regulations do not extend to the Isle of Man.

6.4 In areas of intellectual property law where the UK law does not extend directly to the Isle of Man, the Isle of Man Government maintains its legislation in line with that of the UK by means of Manx law.

6.5 EU law applies to the Isle of Man only to the extent set out in Protocol 3 of the Act of Accession. Relevant EU legislation is applied (and, if necessary, modified) through Manx law.

6.6 The European Union and Trade Act 2019 (Act 2 of 2019) was passed by Tynwald and given Royal Assent on 15 January 2019. In the same way as the European Union (Withdrawal) Act 2018, it enables the retention of applicable EU law in Manx law and facilitates the amendment of that retained law to fix any issues arising from Brexit.

6.7 The changes to direct EU legislation made by the 2019 UK Regulations have been mirrored in the Isle of Man by the European Union and Trade Act 2019 (Deficiencies) (Patents) Regulations 2019 (SD 2019/0121); a statutory document under the European Union and Trade Act 2019.

7. Policy background

What is being done and why?

7.1 It is important to ensure that the provisions of the Patents Act and Rules apply appropriately in the Isle of Man, to avoid any gap in how the law operates across the territory where a UK patent has effect.

7.2 The amendments to the Isle of Man Order in this instrument are small, technical changes. They replace the terminology used to describe a type of compulsory licence which will no longer be accurate after Brexit, and ensure that an exception for farmers to use their harvest of certain crops for further planting without infringing any patent on them ("farmers' privilege"), which currently relies on certain definitions in EU law to set conditions on how the exception works, can continue to function correctly. These correspond to changes made in Part 2 of the 2019 UK Regulations.

7.3 In addition, the instrument inserts a general provision into the Isle of Man Order designed to ensure that any amendments to secondary legislation under the Patents Act, such as the Patents Rules, made using the powers in the European Union (Withdrawal) Act are also extended to the Isle of Man.

8. European Union (Withdrawal) Act/Withdrawal of the United Kingdom from the European Union

8.1 This instrument is not being made under the European Union (Withdrawal) Act but relates to the withdrawal of the United Kingdom from the European Union because it extends changes made in UK law to deal with inoperabilities arising from that withdrawal to the Isle of Man.

9. Consolidation

9.1 No consolidation of the Patents (Isle of Man) Order 2013 is planned at present.

10. Consultation outcome

10.1 As the amendments are minor technical changes which have already been approved by Parliament in respect of the United Kingdom, and no impact is foreseen, it was considered unnecessary to consult on their application to the Isle of Man.

10.2 The Isle of Man Government has been consulted on the changes being made and was responsible for drafting the provisions of the instrument in the first instance.

11. Guidance

11.1 Guidance on the effect of Brexit on patent law was published by the Intellectual Property Office in September 2018, with further guidance outlining the effects of the 2019 UK Regulations being published in April 2019, following approval of the instrument by Parliament. This material is consolidated at https://www.gov.uk/government/publications/changes-to-spc-and-patent-law-if-uk-leaves-the-eu-without-a-deal.

12. Impact

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

12.2 There is no, or no significant, impact on the public sector.

12.3 An Impact Assessment has not been prepared for this instrument because the amendments being made are technical only and maintain the existing situation; the change to terminology on compulsory licences has no effect on the ability of business to use the licence, whilst the change to farmers' privilege ensures that those relying on the exception in the Isle of Man before Brexit can continue to do so after Brexit without any change to how they would operate; as a result, no impact is foreseen.

13. Regulating small business

13.1 The legislation applies to activities that are undertaken by small businesses.

13.2 No specific action is proposed to minimise regulatory burdens on small businesses.

13.3 The basis for the final decision on what action to take to assist small businesses is that no impact is foreseen on businesses of any size as a result of these amendments.

14. Monitoring & review

14.1 The review and updating of Orders in Council in relation to intellectual property is continuous.

14.2 The regulation does not include a statutory review clause and, in line with the requirements of the Small Business, Enterprise and Employment Act, Chris Skidmore, Minister of State for Universities, Science, Research and Innovation has made the following statement: "As this instrument makes changes which have no impact on business and which have already been applied to the United Kingdom under the European Union (Withdrawal) Act, on which no review clause is required, I consider that it is not appropriate to include a review clause in this instrument."

15. Contact

15.1 Michael Warren at the Intellectual Property Office, Telephone: 01633 813988 or email: Michael.Warren@ipo.gov.uk can be contacted with any queries regarding the instrument.

15.2 Liz Coleman (Divisional Director, Policy and Legal Division) at the Intellectual Property Office can confirm that this Explanatory Memorandum meets the required standard.

15.3 Chris Skidmore, Minister of State for Universities, Science, Research and Innovation, at the Department for Business, Energy and Industrial Strategy can confirm that this Explanatory Memorandum meets the required standard.