EXPLANATORY MEMORANDUM TO

THE PATENTS (SUPPLEMENTARY PROTECTION CERTIFICATES) REGULATIONS 2014

2014 No. 2411

1. This explanatory memorandum has been prepared by the Department for Business, Innovation and Skills and is laid before Parliament by Command of Her Majesty.

2. Purpose of the instrument

2.1 The instrument amends the Patents Act 1977 in order to update references within the Act to EU Regulations concerning supplementary protection certificates.

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

3.1 None.

4. Legislative Context

4.1 The principal statute on patents is the Patents Act 1977 (c.37) ("the Act"), which provides that inventions may be protected by patents for up to 20 years. However, certain medicinal and plant protection products can be protected for a further period beyond the 20-year patent term by virtue of an EU supplementary protection certificate.

4.2 Such certificates were originally provided by virtue of Council Regulation (EEC) No 1768/92 and Regulation (EC) No 1610/96 of the European Parliament and of the Council. However, after a number of amendments made by other European law to the 1992 Regulation, the decision was taken to "codify" the changes by producing a replacement Regulation. The 1992 Regulation was replaced by Regulation (EC) No 469/2009 of the European Parliament and of the Council.

5. Territorial Extent and Application

5.1 This instrument applies to all of the United Kingdom.

5.2 Separate provision will need to be made to give effect to the Regulations in respect of the Isle of Man.

6. European Convention on Human Rights

Baroness Neville-Rolfe has made the following statement regarding Human Rights:

In my view the provisions of the Patents (Supplementary Protection Certificates) Regulations 2014 are compatible with the Convention rights.

7. Policy background

- **What is being done and why**

7.1 The Act contains various references to the 1992 and 1996 Regulations, and to the certificates granted under them. This ensures that SPCs granted in the UK have the correct legal effect and that our EU obligations are met.

7.2 The Act makes clear that the references to the EU Regulations are to those Regulations "as amended from time to time". This means it is not necessary to update the references in the Act simply because the Regulations may be amended at a European level. However, as noted above, the Commission and Parliament decided in 2009 not to amend the 1992 Regulation but to codify it by producing a replacement. This instrument therefore updates the references to the 1992 Regulation within the Act. The supplementary protection certificate regime will continue to work as at present.

- **Consolidation**

7.3 No consolidation of the Act is planned. An informal consolidated text is publically available for free at www.ipo.gov.uk/patentsact1977.pdf

8. Consultation outcome

8.1 As this instrument simply updates references to EU legislation, no formal consultation has taken place.

9. Guidance

9.1 Stakeholders will be informed of the update, and official guidance for users on supplementary protection certificate law and practice will be updated.

10. Impact

10.1 The impact on business, charities or voluntary bodies is none.

10.2 The impact on the public sector is none.

10.3 An Impact Assessment has not been prepared for this instrument.

11. Regulating small business

11.1 The instrument applies to small business but, as for other sectors, it has no impact.

12. Monitoring & review

12.1 No review is envisaged.

13. Contact

James Porter at the Intellectual Property Office (an executive agency of the Department for Business, Innovation and Skills) can answer any queries regarding the instrument. Tel: 01633 814521 or email: james.porter@ipo.gov.uk