

EXPLANATORY MEMORANDUM TO
THE COMMUNITY DESIGNS (DESIGNATION OF COMMUNITY DESIGN
COURTS) REGULATIONS 2005

2005 No.696

1. This explanatory memorandum has been prepared by the Department of Trade and Industry and is laid before Parliament by Command of Her Majesty.

2. **Description**

This Instrument designates a number of courts as Community Design Courts.

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

None

4. **Legislative Background**

This Instrument is being made under section 2(2) of the European Communities Act 1972.

5. **Extent**

This Instrument applies to all of the United Kingdom.

6. **European Convention on Human Rights**

Not applicable.

7. **Policy background**

This Instrument designates courts of “first instance” and “second instance”, as required by Article 80(1) of Council Regulation (EC) No. 6/2002 on the Community design (“Regulation 6/2002”). The courts that are designated to hear disputes over Community design are the same courts that already hear disputes over domestic designs.

8. **Impact**

The designation of Community Design Courts is a community obligation which will have only a very minor impact on the UK.

9. **Contact**

Pierre Oliviere at the Patent Office (an executive agency of the Department of Trade and Industry) 01633 81 4493 and e-mail: pierre.oliviere@patent.gov.uk can answer any queries regarding the instrument.

Final Regulatory Impact Assessment

1. Title of Proposal

- 1.1 The Community Designs (Designation of Community Design Courts) Regulations 2005.

2. Purpose and intended effect of measure

(i) The objectives

- 2.1 To meet the requirements imposed by Article 80 of Council Regulation (EC) No. 6/2002 on the Community design to designate Community design courts of first and second instance.

(ii) The background

- 2.2 The Community design system is now in operation. UK users can choose between national UK-wide registered design protection, and Community design protection throughout the European Union. The EC Regulation requires Member States to designate Community design courts.

(iii) Risk assessment

- 2.3 If no Community design courts are designated, there is a risk of infraction proceedings as this is a Community obligation. However, this is likely to have a low impact. National registered design cases reach full trial infrequently (one or two cases a year) and it is unlikely that there will be many Community design cases before UK courts. Until designation, the relevant courts are assumed to be those which have jurisdiction for national design cases. Nevertheless, we are under a Community obligation to make the designation.

3. Options

- 3.1 Legislation is required. This can be done by regulations under the European Communities Act 1972.

4. Benefits

- 4.1 The designation of Community design courts, will ensure we meet Community obligations.

Business sectors affected

4.2 This affects all business sectors involved with designs.

Issues of equity and fairness

4.3 This affects all those involved in legislation in relation to Community designs in the UK, but only to the extent of confirming which courts are available. No issues of fairness arise.

5. Costs

5.1 There are no compliance costs for firms as the courts to be designated are those which are currently competent for designs matters.

6. Small Firms' Impact Test

6.1 Making the proposed designations would have no obvious adverse effect on small business.

7. Competition assessment

7.1 The proposed changes would have little effect on competition in the design industry, as the designated courts are those which are currently competent for designs matters.

8. Enforcement and sanctions

8.1 Not applicable

9. Monitoring and review

9.1 The Patent Office is monitoring the use of the Community design system as it settles down, along with the use of the UK registered design system, to ensure that both systems work effectively. We meet regularly with users to collect their experiences of both systems.

10. Consultation

(i) Within government

10.1 The following government departments and agencies have been consulted on this matter:

Defence Procurement Agency
Department of Constitutional Affairs
Department of Trade and Industry
Home Office
Foreign and Commonwealth Office
Northern Ireland Court Service
Patent Office
Scottish Executive (for Court Service)
Small Business Service

(ii) Public Consultation

10.2 A 12-week consultation has taken place, with a consultation document published on the Patent Office website, as well as being available in hard copy. Lists of stakeholders regularly used by the Patent Office for the purposes of consultation have been notified of the consultation, including those which have a particular interest in designs. Representative groups were consulted, such as the Institute of Trade Mark Agents (ITMA), and the Chartered Institute of Patent Agents (CIPA).

There were no comments made on this issue

11. Summary and recommendation

11.1 In summary, legislation should be made which designates Community design courts. There do not seem to be any disadvantages to this proposal.

12. Declaration

I have read the Regulatory Impact Assessment and I am satisfied that the benefits justify the costs.

Signed Sainsbury of Turville

Date 10th March 2005

**Lord Sainsbury of Turville
Parliamentary Under-Secretary of State for Science & Innovation
Department of Trade and Industry**

Contact point

Pierre Oliviere at the Patent Office on 01633 81 4493 and e-mail: pierre.oliviere@patent.gov.uk can answer any queries regarding the instrument.