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The UK's Ratification of the UPC Agreement – Where are we now?

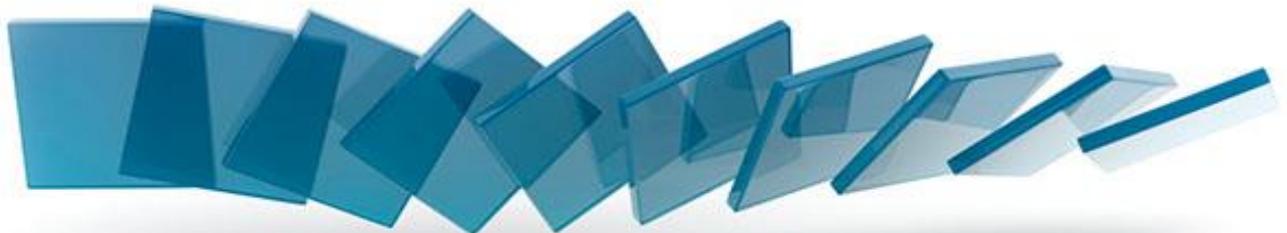
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Overview

Before the UK is able to ratify the Unified Patents Court Agreement, statutory instruments establishing the Unified Patent Court as a corporate entity in the UK and granting it certain privileges and immunities (such as inviolability of its records and premises) must be approved both by the Westminster and Scottish parliaments. Now that the parliaments have returned from their respective summer recesses, we are able to provide updates on the progress of both.

In Brief

Both statutory instruments have been laid before the respective parliaments and are currently going through the relevant approval processes. There is no guidance on timing in Westminster, as the committees that still need to consider it have not yet been constituted, but the Scottish equivalent **must** have passed the committee stage by 29 October 2017.



Westminster Statutory Instrument

The draft [Unified Patents Court \(Immunities and Privileges\) Order 2017](#) (the “**Westminster SI**”) has been included as future business on each Order Paper published since parliament returned from its recess last week, but no timetable has yet been set.

The Westminster SI will follow the “*affirmative resolution procedure*”, which means that it must be approved by votes of both chambers of the Westminster parliament: the House of Commons and the House of Lords. Before this can occur, the following steps must be taken:

Approval by the Joint Committee on Statutory Instruments

The Joint Committee on Statutory Instruments (the “**JCSI**”) is a cross-party committee composed of members of both the House of Commons and House of Lords, which scrutinises statutory instruments proposed by ministers. The JCSI does not consider the merits of a draft instrument, but is responsible instead only for ensuring that a Minister's powers are being carried out in accordance with the provisions of the enabling Act (in this case, the Foreign Secretary's powers delegated by the International Organisations Act 1968). The JCSI was dissolved prior to the general election in June, and has not yet been re-appointed.

Consideration by the Secondary Legislation Scrutiny Committee (House of Lords)

This is a cross-party House of Lords committee which considers the merits of every draft instrument brought before the House. The committee's role is to review each draft instrument and determine whether or not the special attention of the House should be drawn to it in advance of the debate. The grounds upon which an instrument may be drawn to the House's attention are as follows:

- that it is politically or legally important or gives rise to issues of public policy likely to be of interest to the House;
- that it may be inappropriate in view of changed circumstances since the enactment of the parent Act;
- that it may inappropriately implement European Union legislation;
- that it may imperfectly achieve its policy objectives;
- that the explanatory material laid in support provides insufficient information to gain a clear understanding about the instrument's policy objective and intended implementation; and
- that there appear to be inadequacies in the consultation process which relates to the instrument.

This Westminster SI has already been considered by the SLSC, which decided not to draw special attention to it. This step has therefore been completed.

Debate by a Delegated Legislation Committee (House of Commons)

A Delegated Legislation Committee (a “**DLC**”) will be specially appointed for a particular statutory instrument or a series of related instruments, and will stand as a proxy for debate in the House of Commons. DLCs are commonly composed of seventeen Members of Parliament, but there can be as many as fifty. Any Member of Parliament may attend and speak at the meeting, but only the members of the DLC are entitled to vote. If they approve the instrument, it goes to a full vote of the House of Commons without further debate. No DLC has yet been appointed for the Westminster SI.

Scottish Statutory Instrument

The draft of an equivalent instrument, the [International Organisations \(Immunities and Privileges\) \(Scotland\) Amendment \(No. 2\) Order 2017](#) (the “**Scottish SI**”) has also been placed before the Scottish parliament, and the timetable for its progress is clearer than for its Westminster counterpart. Two steps must be satisfied before the Scottish SI will be voted upon by the full House:

Approval by the Delegated Powers and Law Reform Committee

The Delegated Powers and Law Reform Committee (the “**DPLRC**”) is the Scottish equivalent of the Joint Committee on Statutory Instruments, which scrutinises instruments for any technical or legal issues without

considering their merits. The DPLRC considered the Scottish SI in its meeting on 19 September 2017 and “*agreed that no points arose*”. This step has therefore been completed.

Approval by the Justice Committee

This is a cross-party committee of Members of the Scottish Parliament responsible for scrutinising the Scottish government’s policies relating to “justice”. The committee will consider and vote upon the Scottish SI. If approved, it will be referred to the full House with a recommendation that it be passed. No date has yet been fixed for this, but the Justice Committee must deliver its decision by no later than **29 October 2017**.

To keep up to date with the overall status of ratifications of the UPC Agreement, go to [Allen & Overy's UPC microsite](#). There you will find a summary of current ratifications, as well as a flow chart setting out the steps remaining before the UPC opens its doors

Author



James Fox
Associate
Litigation - IP
Tel +44 20 3088 3089
james.fox@allenoverly.com

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