

FOI Release
Information released under the Freedom of Information Act

Title: Grace period for payment of a deficient trade mark application fee

Date of release: 22 March 2017

Information request:

The identity of the legislation that led to the alleged change of the two month Grace period into a one month Grace period.

Information released:

The relevant legislation concerning the grace period allowed for late payment of trade mark application fees is the Trade Mark Rules. (Section 78 of the Trade Marks Act 1994 enables the Secretary of State to make rules to regulate practices and procedures under the Act.)

In the Trade Marks Rules 2000 (2000 No.136), Rule 11 stipulated that the time period for resolving a default of payment be two months from the date of our notice (of the default).

Subsequently this changed on introduction of the Trade Marks Rules 2008 (2008 No. 1797), wherein rule 13(2) confirmed that the timeframe for remedying default of payment be not less than one month (again from the date of the notice).

This changed again on introduction of SI 2009 No. 2089. This legislation brought in two major changes to the trade mark application process: the IPO (i) introduced a reduced fee for e-filed applications (where the fee is paid at the time of filing); and (ii) introduced the 'Right Start' two-part application process. Coupled with these changes, Article 9 of that statutory instrument confirmed that the wording of rule 13(2) be amended from '(not less than) one month' to '(not less than) 14 days'.

In practice the IPO currently allows one month for payment, even though the law permits us to enforce a 14 day limit.