

FOI Release
Information released under the Freedom of Information Act

Title: Late payment of trade mark fees

Date of release: 4 April 2017

Information request:

(1) The identity of the relevant section of the primary legislation (a) *Trade Marks Act 1938* and (b) *Trade Marks Act 1994* which relate to any grace period [or delay] in relation to the payment of fees: and

(2) The identity of the relevant section of all subordinate legislation, including all rules and regulations, published since the *Trade Marks Act 1938* which relates to any grace period [or delay] in relation to the payment of fees: and

(3) The identity of the relevant section of all legislation, including all Acts, Rules and regulations, published since the *Trade Marks Act 1938* which mandates a particular form to be filled in relation to the payment of fees.

Information released:

The Trade Marks Act 1938 did not specifically refer to any grace period for delayed payment of fees, though it did empower the Board of Trade to make rules, under section 40. The Trade Marks Act 1994 similarly empowers the Secretary of State under sections 78 and 79 to make rules to regulate practice and set fees.

The IPO does hold some copies of rules drawn up under the 1938 Act, but we cannot guarantee that they amount to a complete set of the secondary legislation. From the documents we do hold, there does not appear to have been any provision made for any delayed payment of (application) fees prior to the 1994 Act. I attach pdf files of extracts from the relevant statutory instruments.

1. The Trade Mark Rules, 1938 (S.I. No.661). The opening paragraph on page 32 made it clear that “fees must be paid before or at the time of doing the matter in respect of which they are to be paid”. The extract also includes a copy of the prescribed application form (TM2) showing the box to be stamped following receipt of payment of £1.
2. The Trade Marks (Amendment) Rules, 1955 (S.I. No. 461). Application fee increased to £2.
3. The Trade Marks (Amendment) Rules, 1964 (S.I. No. 227). Application fee increased to £4. Paragraph 2(a) refers to the collection of fees, to accompany the specified form.
4. The Trade Marks (Amendment) Rules, 1978 (S.I. No. 1120). Application fee increase to £23.00.
5. The Trade Marks (Amendment) Rules, 1980 (S.I. No. 221). Application fee increase to £31.00.

The 1938 and 1994 Trade Mark Acts and more recent Rules are available to you from other sources, namely online at <https://www.gov.uk/topic/intellectual-property/law-practice> and <http://www.legislation.gov.uk/> . Because they are reasonably available to you by other means the Intellectual Property Office is not obliged to provide them to you under the Freedom of Information Act 2000. (Section 21 FOIA refers to this exemption.)

If you wish to verify whether there have been other Rules issued since 1938 which are not included in the list above nor available online, you may address your enquiry to the Parliamentary Archives at: <http://www.parliament.uk/business/publications/parliamentary-archives/> .