
EXPLANATORY NOTE

(This note is not part of the Regulations)

These regulations implement Directive [98/71/EC](#) of the European Parliament and of the Council of 13th October 1998 on the legal protection of designs (O.J. No. L289, 28.10.1998, p.28) (“the Directive”) which provides for harmonisation in the EC of the matters of registered design protection which most closely affect the functioning of the internal market. The Directive was extended to the European Economic Area by Decision No.21/2000 of the EEA Joint Committee.

The Registered Designs Act 1949 (“the Act”) already provides a very similar protection to that required under the Directive. These regulations amend the Act insofar as its provisions do not comply with the requirements of the Directive. It also makes transitional provisions and consequential amendments to other Acts.

Regulations 2 to 8 implement the main requirements of the Directive. In particular they:

- (a) extend the definition of “design” and amend the requirements for a design to be protectable, including amending the test for novelty and introducing a test for “individual character”;
- (b) amend the field of earlier disclosures against which a design is tested for novelty and individual character;
- (c) allow the designer to apply for protection up to a year after he first discloses a design without his own disclosures counting against the registration;
- (d) amend the period of protection to a maximum of 25 years from the filing date of the application (or date deemed as the filing date because of an amendment which changes the design or because an application has been “divided out” from an application which contained more than one design), rather than from the date of filing any earlier “priority” application as may be the case at present;
- (e) amend the grounds on which the registrar may refuse an application or a third party may request a declaration of invalidity;
- (f) amend the rights which are conferred by registration of a design, including types of use of the design which the right-holder can and cannot control;
- (g) provide that the use of the design of a component part used for the purpose of the repair of a complex product so as to restore its original appearance shall not be an infringement of the rights in the design;
- (h) make explicit the principle of “exhaustion of rights”, whereby a right-holder cannot continue to use these rights to control movement or use of a product after it has been put on the market in the EEA by him or with his consent.

Regulations 9 to 14 make consequential amendments to the Act and other Acts, together with transitional provisions for applications and registrations already existing when the regulations come into force, including the following:

- (a) the validity of existing registrations, or registrations resulting from existing applications, will continue to be measured according to the Act as it applied to them immediately before these regulations came into force;

Status: This is the original version (as it was originally made).

- (b) amended rights in existing registrations cannot be used to prevent the continuation of actions begun by a third party prior to these regulations coming into force, which could not have been prevented before that time;
- (c) the maximum period of protection for certain existing registrations which had been subject to a 15 year limit is extended to 25 years;
- (d) the period of protection for existing registrations which depend on an earlier “priority” application is extended so that the term expires on an anniversary of the filing date rather than the priority date (which may be up to six months earlier).

A regulatory impact assessment is available, copies of which have been placed in the libraries of both Houses of Parliament. Copies of the assessment are also available from the Intellectual Property Policy Directorate of the Patent Office, Room 3B38, Concept House, Cardiff Road, Newport NP10 8QQ.