
EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations are made in exercise of the powers conferred by—

- section 8(1) of the European Union (Withdrawal) Act 2018 (c.16) (“the EUWA”) in order to address failures of retained EU law to operate effectively and other deficiencies; and
- paragraph 1 of Schedule 4 of the EUWA (in relation to the charging of fees or other charges by the registrar in connection with the exercise of functions conferred on the registrar in relation to certain designs and trade marks by virtue of provision made under section 8(1)).

Regulation 3 and Schedule 1 make amendments to Council Regulation (EC) No 6/2002 of 12th December 2001 on Community Designs (as amended) (the “EU Design Regulation”) and the Community Designs Regulations 2005 (the “2005 Regulations”). The main effect of these amendments is to—

- revoke provisions of this legislation so far as they relate to registered designs;
- prospectively rename unregistered Community designs coming into force on or after exit day as “supplementary unregistered designs”;
- provide that supplementary unregistered designs are protected where they are disclosed in the United Kingdom or countries or territories that are designated by statutory instrument under powers inserted into the EU Design Regulation.

Regulation 4 and Schedule 2 make provision in connection with the continued protection of an unregistered Community design which is protected before exit day. The amendments made by regulation 3 and Schedule 1 do not apply to such unregistered designs. Instead the EU Design Regulation and the 2005 Regulations continue to apply to such designs subject to the modifications set out in Schedule 1.

Regulation 5(a) and Schedule 3 make provision for the protection under the Registered Designs Act 1949 (the “1949 Act”) of a design which is at exit day the subject of a registration at the European Union Intellectual Property Office (“EUIPO”) under the EU Design Regulation (or where such registration has expired within 6 months of exit day). Provision is also made allowing makers of applications to the EUIPO which are pending at exit day to apply for protection under the 1949 Act treating applications under the 1949 Act as having the same filing date and rights of priority as the application to the EUIPO.

Regulation 5(b) and Schedule 3 make further provision for the protection of a design which at exit day is protected in the European Union under the Geneva Act of the Hague Agreement by virtue of an international registration which designates the European Union (or where such registration has expired within 6 months of exit day). Provision is also made allowing the holders at exit day of international registrations which have not yet achieved protected status to make applications for registration under the 1949 Act which are treated as having a filing date of the date of the international registration and the same rights of priority.

Regulation 6 and Schedule 4 make provision for the registration of a trade mark which at exit day is protected in the European Union under the Madrid Protocol by virtue of an international registration which designates the European Union (or where such registration has expired within 6 months of exit day). Provision is also made allowing the holders at exit day of international registrations which have not yet achieved protected status to make applications for registration under the Trade Marks Act 1994 which are treated as having a filing date of the date of the international registration and

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the same rights of priority. Similar provisions are made in relation to transformation applications which are pending on exit day.

Regulation 7 and Schedule 5 make provision for the payment of renewal and other fees in relation to designs re-registered under the 1949 Act and trade marks re-registered under the 1994 Act in consequence of provision made by these Regulations.

Regulation 8 and Schedule 6 make amendments to the Registered Design Rules 2006 in consequence of other provision made by these Regulations.

Regulation 9 and Schedule 7 make amendments to the Trade Mark Rules 2008 in consequence of other provision made by these Regulations.

Regulation 10 and Schedule 8 make a number of amendments to other legislation in consequence of other provision made in the Regulations.

Regulation 11 revokes the Community Designs (Designation of Community Design Courts) 2005 Regulations.

An impact assessment has not been published for this instrument as no, or no significant, impact on the private, public and voluntary sectors is foreseen. An explanatory memorandum is available alongside this instrument on the Legislation UK website at www.legislation.gov.uk.