

2019 No. 265

EXITING THE EUROPEAN UNION
INTELLECTUAL PROPERTY

**The Intellectual Property (Exhaustion of Rights) (EU Exit)
Regulations 2019**

Made - - - - *14th February 2019*

Coming into force in accordance with regulation 1

The Secretary of State makes these Regulations in exercise of the powers conferred by section 8(1) of the European Union (Withdrawal) Act 2018^(a).

In accordance with paragraph 1(3) of Schedule 7 to that Act, a draft of this instrument has been laid before Parliament and approved by resolution of each House of Parliament.

PART 1

Introduction

Citation and commencement

1. These Regulations may be cited as the Intellectual Property (Exhaustion of Rights) (EU Exit) Regulations 2019 and come into force on exit day.

PART 2

Effect of certain retained EU law

Exhaustion of intellectual property rights

2.—(1) Anything which—

- (a) was, immediately before exit day, an enforceable EU right relating to the exhaustion of rights of the owner of an intellectual property right under Articles 34 to 36 of the Treaty on the Functioning of the European Union^(b) or Articles 11 to 13 of the Agreement on the European Economic Area^(c), and
- (b) is retained EU law by virtue of section 4 of the European Union (Withdrawal) Act 2018,

^(a) 2018 c.16; see section 20(1) of that Act for the definition of “Minister of the Crown”.

^(b) OJ No. C83, 30.3.2010, p.47.

^(c) OJ No. L1, 3.1.1994, p.3.

has the same effect on and after exit day, despite the United Kingdom not being a member State, as it had immediately before exit day.

(2) In this regulation “enforceable EU right” has the meaning given by section 2(1) of the European Communities Act 1972^(a) (as that Act had effect immediately before its repeal by section 1 of the European Union (Withdrawal) Act 2018).

PART 3

Amendment of primary legislation

Amendment of the Registered Designs Act 1949

3.—(1) The Registered Designs Act 1949^(b) is amended as follows.

(2) In section 7A (infringements of rights in registered designs)^(c), in subsection (4), after “market in” insert “the United Kingdom or”.

(3) In section 24G (meaning of “infringing article”)^(d), in subsection (5), for the words from “an enforceable” to the end substitute “anything which forms part of retained EU law as a result of section 3 or 4 of the European Union (Withdrawal) Act 2018”.

Amendment of the Copyright, Designs and Patents Act 1988

4.—(1) The Copyright, Designs and Patents Act 1988^(e) is amended as follows.

(2) In section 18 (infringement by issue of copies to the public)^(f), in subsection (2), after “put into circulation in” insert “the United Kingdom or”.

(3) In section 27 (meaning of “infringing copy”)^(g), in subsection (5), for the words from “any enforceable” to the end substitute “anything which forms part of retained EU law as a result of section 3 or 4 of the European Union (Withdrawal) Act 2018”.

(4) In section 182B (consent required for issue of copies to the public)^(h)—

(a) in subsection (2), for “EEA” (in each place) substitute “UK-EEA area”;

(b) in subsection (3)—

(i) in paragraph (b), for “another” substitute “an”;

(ii) in the words after that paragraph, for “EEA” (in both places) substitute “UK-EEA area”;

(c) after subsection (3) insert—

“(3A) In this section “UK-EEA area” means the United Kingdom and the EEA, taken together.”.

^(a) 1972 c.68.

^(b) 1949 c.88.

^(c) Section 7A was inserted by S.I. 2001/3949.

^(d) Section 24G was inserted by S.I. 2006/1028.

^(e) 1988 c.48.

^(f) Section 18 was amended by S.I. 1992/3233, S.I. 1996/2967 and S.I. 2018/995.

^(g) Section 27 was amended by S.I. 2011/1043; there are other amending instruments not relevant to these Regulations.

^(h) Section 182B was inserted by S.I. 1996/2967.

(5) In section 228 (meaning of “infringing article”)(a), in subsection (5), for the words from “any enforceable” to the end substitute “anything which forms part of retained EU law as a result of section 3 or 4 of the European Union (Withdrawal) Act 2018”.

Amendment of the Trade Marks Act 1994

5.—(1) The Trade Marks Act 1994(b) is amended as follows.

(2) In section 12 (exhaustion of rights conferred by a registered trade mark), in subsection (1), after “market in” insert “the United Kingdom or”.

(3) In section 17 (meaning of infringing goods)(c), in subsection (3), for “an enforceable EU right” substitute “anything which forms part of retained EU law as a result of section 3 or 4 of the European Union (Withdrawal) Act 2018”.

PART 4

Amendment of subordinate legislation

Amendment of the Design Right (Semiconductor Topographies) Regulations 1989

6. In regulation 8 (infringement) of the Design Right (Semiconductor Topographies) Regulations 1989(d), in paragraph (2)(b), omit “other”.

Amendment of the Copyright and Rights in Databases Regulations 1997

7. In regulation 12 (interpretation) of the Copyright and Rights in Databases Regulations 1997(e), in paragraph (5), after “EEA” (in both places) insert “, the United Kingdom”.

14th February 2019

Chris Skidmore
The Minister for Universities, Science, Research and Innovation
Department for Business, Energy and Industrial Strategy

(a) Section 228 was amended by S.I. 2011/1043.

(b) 1994 c.26.

(c) Section 17(3) was amended by S.I. 2011/1043.

(d) S.I. 1989/1100; there are amending instruments not relevant to these Regulations.

(e) S.I.1997/3032; regulation 12(5) was amended by S.I. 2003/2501; there are other amending instruments not relevant to these Regulations.

EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations:

- a) modify the effect of retained EU law deriving from certain directly effective rights arising under the Treaty on the Functioning of the European Union and the Agreement on the European Economic Area, and
- b) amend retained EU law relating to intellectual property,

which concern the exhaustion of rights of the holder of an intellectual property right. The provisions address failures of retained EU law to operate effectively and other deficiencies (in particular under section 8(2)(d) and (g) of the European Union (Withdrawal) Act 2018) arising from the withdrawal of the United Kingdom from the European Union.

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

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