
STATUTORY INSTRUMENTS

2023 No. 1287

The Intellectual Property (Exhaustion of Rights) (Amendment) Regulations 2023

Amendment of the Copyright, Designs and Patents Act 1988

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

(2) In section 27⁽²⁾ (meaning of “infringing copy”)—

(a) in subsection (5), for the words from “may lawfully” to the end substitute—

“(a) may lawfully be imported into the United Kingdom by virtue of anything which forms part of assimilated law as a result of section 3 of the European Union (Withdrawal) Act 2018, or

(b) has been or is proposed to be imported into the United Kingdom after being put into circulation in the EEA by or with the consent of the copyright owner.”;

(b) after subsection (5) insert—

“(5A) In subsection (5)(a), the reference to assimilated law is to be read, until the coming into force of paragraph 2(6) of Schedule 2 to the Retained EU Law (Revocation and Reform) Act 2023, as a reference to retained EU law.”.

(3) In section 226 (primary infringement of design right), after subsection (3) insert—

“(3A) But design right in a design is not infringed where a person does, or authorises another to do, anything relating to an article that is made to the design if the article has been put on the market in the United Kingdom or the European Economic Area with the licence of the design right owner.”.

(4) In section 228⁽³⁾ (meaning of “infringing article”), for subsection (5) substitute—

“(5) Nothing in subsection (3) shall be construed as applying to an article which—

(a) may lawfully be imported into the United Kingdom by virtue of anything which forms part of assimilated law as a result of section 3 of the European Union (Withdrawal) Act 2018, or

(b) has been or is proposed to be imported into the United Kingdom after being put on the market in the European Economic Area by or with the licence of the design right owner.

(5A) In subsection (5)(a), the reference to assimilated law is to be read, until the coming into force of paragraph 2(6) of Schedule 2 to the Retained EU Law (Revocation and Reform) Act 2023, as a reference to retained EU law.”.

(1) 1988 c. 48.

(2) Section 27 was amended by S.I. 2011/1043 and S.I. 2019/265. There are other amending instruments not relevant to these Regulations.

(3) Section 228 was amended by S.I. 2011/1043 and S.I. 2019/265.