



“Design Regulation” means Council Regulation (EC) No 6/2002 of 12th December 2001 on Community Designs as amended by Council Regulation (EC) 1891/2006 of 18th December 2006 to give effect to the accession of the European Community to the Geneva Act of the Hague Agreement concerning the international registration of industrial designs and by the Decision of the European Union of 5th December 2011 on the admission of the Republic of Croatia to the European Union;

“Registered Designs Rules” means the Registered Designs Rules 2006(a); and

“Trade Marks Rules” means the Trade Marks Rules 2008(b).

### **Amendments to the Design Regulation and the 2005 Regulations relating to the creation and application of the supplementary unregistered design etc.**

3.—(1) The Design Regulation is amended by Part 1 of Schedule 1 to create the supplementary unregistered design.

(2) The 2005 Regulations are amended by Part 2 of Schedule 1 to apply them to the supplementary unregistered design.

### **Unregistered Community designs existing immediately before exit day**

4.—(1) The amendments to the Design Regulation and the 2005 Regulations made by regulation 3 do not apply to an unregistered Community design which is protected under the Design Regulation immediately prior to exit day and remains protected on exit day.

(2) That design is referred to as a “continuing unregistered Community design”.

(3) The Design Regulation and the 2005 Regulations apply to a continuing unregistered Community design subject to—

(a) as regards the Design Regulation, the modifications set out in Part 1 of Schedule 2; and

(b) as regards the 2005 Regulations, the modifications set out in Part 2 of Schedule 2.

### **Certain registered Community designs and international designs to have effect under the 1949 Act**

5. Schedule 3 contains amendments to the 1949 Act to make provision:

(a) for certain registered Community designs to be treated as registered under the 1949 Act from exit day and about certain applications for registered Community designs made before exit day; and

(b) for certain international registered designs designating the European Union to be treated as registered under the 1949 Act from exit day and about certain applications for international designs designating the European Union made before exit day.

### **International trade marks**

6. Schedule 4 contains amendments to the 1994 Act to make provision for certain international trade marks protected in the European Union to be treated as registered trade marks under the 1994 Act from exit day and about certain applications for the protection of an international trade mark in the European Union and transformation applications made before exit day.

### **Fees payable in respect of re-registered designs, international re-registered designs, and comparable trade marks (IR)**

7. Schedule 5 makes provision for the payment of fees in respect of—

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(a) S.I. 2006/1975, as amended by S.I. 2008/2683, 2009/546, 2013/444 and 2014/2405.

(b) S.I. 2008/1797, as amended by S.I. 2009/546, S.I. 2009/2089, S.I. 2012/1003, S.I. 2013/2235, S.I. 2018/825; there are other amending instruments but none are relevant.

- (a) a re-registered design (as that term is defined for the purposes of Schedule 1A to the 1949 Act as inserted by Schedule 3);
- (b) an international re-registered design (as that term is defined for the purposes of Schedule 1B to the 1949 Act as inserted by Schedule 3);
- (c) a comparable trade mark (IR) (as that term is defined for the purposes of Schedule 2B to the 1994 Act as inserted by Schedule 4).

**Amendments to the Registered Designs Rules**

8. Schedule 6, which contains amendments to the Registered Designs Rules, has effect.

**Amendments to the Trade Marks Rules**

9. Schedule 7, which contains amendments to the Trade Marks Rules, has effect.

**Other amendments to legislation**

10.—(1) Schedule 8, which contains other amendments to legislation, has effect.

(2) Any application or proceeding under the 1994 Act which was made or commenced before the coming into force of these Regulations shall be dealt with under the 1994 Act as it had effect before paragraph (1) comes into force.

**Revocation**

11. The Community Designs (Designation of Community Design Courts) Regulations 2005(a) are revoked.

	<i>Name</i>	
	Title	
Date	Department for Business, Energy and Industrial Strategy	

We consent to the making of these regulations

	<i>Name</i>
	<i>Name</i>
Date	Two of the Lords Commissioners of Her Majesty's Treasury

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(a) S.I. 2005/696.

Amendments to the Design Regulation and 2005 Regulations relating to the creation and application of the supplementary unregistered design right etc.

**PART 1**

Design Regulation and supplementary unregistered designs

**Introductory**

- 1.—(1) The Design Regulation is amended as set out in this Part.
- (2) A reference in this Part to an Article is to an Article of the Design Regulation.

**Substitution of Article 1 – supplementary unregistered designs**

2. For Article 1, substitute—

*“Article 1*

**Supplementary unregistered design**

1. A design which complies with the conditions contained in this Regulation is referred to as a “supplementary unregistered design”.
2. A design shall be protected as a supplementary unregistered design, if made available to the public in the manner provided for in this Regulation.
3. But a design that is made available to the public before exit day is not protected under this Regulation.”.

**Omission of Article 2 (European Union Intellectual Property Office)**

3. Omit Article 2.

**Amendments to Article 3 (definitions)**

4. In Article 3, after point (c), insert—
  - “(d) ‘qualifying country’ and ‘qualifying territory’ mean a country or territory designated by regulations made under Article 7.”.

**Amendments to Article 4 (requirements for protection)**

5. In Article 4(1), for “Community”, substitute “supplementary unregistered”.

**Amendments to Article 5 (novelty)**

6. In Article 5(1)—
  - (a) in point (a)—
    - (i) for “an”, substitute “a supplementary”;
    - (ii) omit “Community”;
  - (b) omit point (b).

### **Amendments to Article 6 (individual character)**

7. In Article 6(1)—
- (a) in point (a)—
    - (i) for “an”, substitute “a supplementary”;
    - (ii) omit “Community”;
  - (b) omit point (b).

### **Substitution of Article 7 (disclosure)**

8. For Article 7, substitute—

*“Article 7*

#### **Disclosure**

1. Subject to paragraph 4, for the purposes of applying Articles 5 and 6, a supplementary unregistered design shall be deemed to have been made available to the public where paragraph 2 or 3 applies.
2. This paragraph applies where before exit day, the design was published or exhibited, used in trade or otherwise disclosed except where those events could not have become known in the normal course of business to the circles specialised in the sector operating within the European Union.
3. This paragraph applies where on or after exit day but before the date mentioned in Articles 5(1)(a) or 6(1)(a), the design was published or exhibited, used in trade or otherwise disclosed except where those events could not have become known in the normal course of business to the circles specialised in the sector operating within the United Kingdom, a qualifying country or a qualifying territory.
4. A design shall not, however, be deemed to have been made available to the public for the sole reason that it has been disclosed to a third person under explicit or implicit conditions of confidentiality.
5. For the purposes of this Regulation, a “qualifying country” is a country designated as such, and a “qualifying territory” is a territory designated as such, in Regulations made by the Secretary of State.
6. Regulations under paragraph 5 are to be made by statutory instrument and are subject to annulment in pursuance of a resolution of either House.”

### **Amendments to Articles 8 to 10 (technical function, interconnections, public policy and morality)**

9. In Articles 8, 9 and 10(1), for “Community”, in each place it appears, substitute “supplementary unregistered”.

### **Amendments to Article 11 (commencement and term of protection of the unregistered Community design)**

10. In Article 11—
- (a) in the heading—
    - (i) before “unregistered”, insert “supplementary”;
    - (ii) omit “Community”;
  - (b) in point 1—
    - (i) for “an”, substitute “a supplementary”;
    - (ii) omit “Community”, the in the first place it appears;

- (iii) for “Community”, in the second place it appears, substitute “United Kingdom, a qualifying country or a qualifying territory”;
- (c) in paragraph 2, for “Community”, in both places it appears, substitute “United Kingdom, a qualifying country or a qualifying territory”.

**Omission of Articles 12 and 13 (registered Community design: commencement, term of protection and renewal)**

11. Omit Articles 12 and 13.

**Amendment to the heading of section 3 of Title 2 (right to the Community design)**

12. In the heading of section 3 of Title 2, for “Community”, substitute “supplementary unregistered”.

**Amendments to Article 14 (right to the Community design)**

13. In Article 14—

- (a) for “Community”, in each place it appears, including in the heading, substitute “supplementary unregistered”;
- (b) in point 3, omit “or specified under national law”.

**Amendments to Article 15 (claims relating to the entitlement to a Community design)**

14. In Article 15—

- (a) in the heading, for “Community”, substitute “supplementary unregistered”;
- (b) in point 1—
  - (i) for “an”, substitute “a supplementary”;
  - (ii) omit “Community”, in the first place it appears;
  - (iii) omit from “, or a registered” to “name of,”;
  - (iv) for “the Community”, substitute “that”;
- (c) in point 2, for “Community”, substitute “supplementary unregistered”;
- (d) in point 3—
  - (i) omit “the date of publication of a registered Community design or”;
  - (ii) for “an”, substitute “a supplementary”;
  - (iii) omit “Community”, in the second place it appears;
  - (iv) for “the unregistered Community”, substitute “that”;
  - (v) omit “applied for or”;
- (e) omit point 4.

**Omission of Articles 16 to 18 (effects of a judgment on entitlement, presumption, right to be cited)**

15. Omit Articles 16 to 18.

**Amendment to the heading of section 4 of Title 2 (effects of the Community design)**

16. In the heading of section 4 of Title 2, for “Community”, substitute “supplementary unregistered”.

### **Amendments to Article 19 (rights conferred by the Community design)**

#### **17. In Article 19—**

- (a) in the heading, for “Community”, substitute “supplementary unregistered”;
- (b) in paragraph 1, for “registered Community”, substitute “supplementary unregistered”;
- (c) in point 2—
  - (i) for “An”, substitute “A supplementary”;
  - (ii) omit “Community”;
- (d) omit point 3.

### **Amendments to Article 20 (limitation of the rights conferred by a Community design)**

#### **18. In Article 20—**

- (a) in the heading and in point 1, for “Community”, substitute “supplementary unregistered”;
- (b) in point 2—
  - (i) in the words before point (a), for “Community”, substitute “supplementary unregistered”;
  - (ii) in points (a) and (b), for “Community”, substitute “United Kingdom”.

### **Amendments to Article 21 (exhaustion of rights)**

#### **19. In Article 21—**

- (a) for “Community”, in the first, second and fourth place it appears, substitute “supplementary unregistered”;
- (b) before “Community”, in the third place it appears, insert “United Kingdom or the European Economic Area”.

### **Omission of Articles 22 and 23 (prior use and government use)**

#### **20. Omit Articles 22 and 23.**

### **Amendments to Article 24 (declaration of invalidity)**

#### **21. In Article 24—**

- (a) omit point 1;
- (b) in point 2—
  - (i) for “Community”, in the first place it appears, substitute “supplementary unregistered”;
  - (ii) for “the Community design”, substitute “it”;
  - (iii) omit “or has been surrendered”;
- (c) in point 3—
  - (i) for “Community”, in the first place it appears, substitute “supplementary unregistered”;
  - (ii) omit “Community”, in the second place it appears.

### **Amendments to Article 25 (grounds for invalidity)**

#### **22. In Article 25—**

- (a) in point 1—

- (i) in the words before subparagraph (a), for “Community”, substitute “supplementary unregistered”;
- (ii) in point (c), omit “Community”;
- (iii) omit point (d);
- (iv) in point (e)—
  - (aa) omit “Community law or”;
  - (bb) omit “of the Member State”;
- (v) in point (f)—
  - (aa) omit “the”, in the second place it appears;
  - (bb) omit “of a Member State”;
- (vi) in point (g), for “a Member State”, substitute “the United Kingdom, a qualifying country or a qualifying territory”;
- (b) in point 2, for “Community”, substitute “supplementary unregistered”;
- (c) in point 3—
  - (i) omit “(d),”;
  - (ii) omit “the applicant for or”;
- (d) omit points 5 and 6.

**Amendments to Article 26 (consequences of invalidity)**

**23.** In Article 26—

- (a) in point 1, for “Community”, substitute “supplementary unregistered”;
- (b) in point 2—
  - (i) omit “the national provisions relating either to”;
  - (ii) for “Community”, in both places it appears, substitute “supplementary unregistered”.

**Amendment to the heading of Title 3: supplementary unregistered designs as objects of property**

**24.** In the heading of Title 3, for “Community”, substitute “Supplementary Unregistered”.

**Amendments to Article 27: supplementary unregistered design rights as national design rights**

**25.** In Article 27—

- (a) for the heading, substitute “Property right”;
- (b) for points 1 to 4, substitute “A supplementary unregistered design is personal property (in Scotland, incorporeal moveable property) which subsists in accordance with this Regulation.”.

**Omission to Articles 28 to 31 (transfer, rights in rem, levy and insolvency)**

**26.** Omit Articles 28 to 31.

**Article 32 (licensing)**

**27.** In Article 32—

- (a) in point 1—
  - (i) for “Community”, in the first place it appears, substitute “supplementary unregistered”;

- (ii) omit “for the whole or part of the Community”;
- (b) in points 2 to 4, for “Community”, in each place it appears, substitute “supplementary unregistered”;
- (c) omit point 5.

**Omission of Articles 33 to 78 (general provisions)**

28. Omit Articles 33 to 78.

**Amendment to the heading of Title 9 (jurisdiction and procedure in legal actions relating to Community designs)**

29. In the heading of Title 9, for “Community”, substitute “Supplementary Unregistered”.

**Omission of Article 79 (application of the Convention on jurisdiction and enforcement)**

30. Omit Article 79.

**Amendment to the heading of section 2 (disputes concerning infringement and validity of designs) of Title 9**

31. In the heading of section 2 of Title 9, for “Community”, substitute “supplementary unregistered”.

**Omission of Article 80 (Community design courts)**

32. Omit Article 80.

**Substitution of Article 81 (The “design court” – jurisdiction over infringement and validity)**

33. For Article 81, substitute—

*“Article 81*

**The “design court” – Jurisdiction over infringement and validity**

1. In this Regulation, “design court” means—
  - (a) in England and Wales, the High Court;
  - (b) in Scotland, the sheriff court and the Court of Session; and
  - (c) in Northern Ireland, the county court and the High Court.
2. The design court has exclusive jurisdiction—
  - (a) for infringement actions and actions in respect of threatened infringement of supplementary unregistered designs;
  - (b) for actions for declaration of non-infringement of supplementary unregistered designs;
  - (c) for actions for a declaration of invalidity of a supplementary unregistered design;
  - (d) for counterclaims for a declaration of invalidity of a continuing a supplementary unregistered design raised in connection with actions under (a).”

**Omission of Articles 82 and 83: jurisdiction**

34. Omit Articles 82 and 83.

**Amendments to Article 84 (action or counterclaim for a declaration of invalidity of a supplementary unregistered design)**

**35.** In Article 84—

- (a) in the heading and in paragraph 1, for “Community”, substitute “supplementary unregistered”;
- (b) in point 2—
  - (i) before “(4)”, insert “and”;
  - (ii) omit “and (5)”;
- (c) in point 3—
  - (i) for “Community”, substitute “supplementary unregistered”;
  - (ii) for “conditions” to “situated”, substitute “laws applying to the design courts”;
- (d) in point 4, for “Community”, substitute “supplementary unregistered”.

**Amendments to Article 85 (presumption of validity – defence as to the merits)**

**36.** In Article 85—

- (a) omit point 1;
- (b) in point 2—
  - (i) for “an”, in the third place it appears, substitute “a supplementary”;
  - (ii) omit “Community”, in the first and second places it appears;
  - (iii) for “Community”, in the third and fourth places it appears, substitute “supplementary unregistered”.

**Amendments to Article 86 (judgments of invalidity)**

**37.** In Article 86—

- (a) in point 1—
  - (i) in the words before point (a)—
    - (aa) omit “Community”, in the first place it appears;
    - (bb) for “Community”, in the second place it appears, substitute “supplementary unregistered”;
  - (ii) in points (a) and (b), for “the Community”, in each place it appears, substitute “that”;
- (b) omit points 2 to 5.

**Omission of Articles 87 and 88 (effect of judgment on invalidity and applicable law)**

**38.** Omit Articles 87 and 88.

**Amendments to Article 89 (sanctions in actions for infringement)**

**39.** In Article 89—

- (a) in point 1—
  - (i) in the words before point (a)—
    - (aa) omit “Community”, in the first place it appears;
    - (bb) for “Community”, in the second place it appears, substitute “supplementary unregistered”;
  - (ii) in point (a), for “the Community”, substitute “that”;
  - (iii) in point (d), omit from “the law” to “international”;

- (b) omit point 2.

**Amendments to Article 90 (provisional measures, including protective measures)**

**40.** In Article 90—

- (a) in point 1—
  - (i) omit “of a Member State”;
  - (ii) omit “Community”, in the first place it appears;
  - (iii) for “Community”, in the second place it appears, substitute “supplementary unregistered”;
  - (iv) omit from “under” to the end of the sentence;
- (b) in point 2, for “Community”, substitute “supplementary unregistered”;
- (c) in point 3—
  - (i) omit “Community”;
  - (ii) omit from “whose” to “(4)”;
  - (iii) omit from “, which” to “jurisdiction”.

**Omission of Articles 91 and 92 (specific rules on related actions and appeals)**

**41.** Omit Articles 91 and 92.

**Amendment to the heading of section 3 (other disputes concerning Community designs) of Title 9**

**42.** In the heading of section 3 of Title 9, for “Community”, substitute “supplementary unregistered”.

**Omission of Articles 93 (supplementary provisions on the jurisdiction of national courts)**

**43.** Omit Article 93.

**Amendments to Article 94 (obligation of the national court)**

**44.** In Article 94—

- (a) for “national”, substitute “design”, in the heading and the other place it appears;
- (b) for “Community”, substitute “supplementary unregistered”.

**Omission of Title 10 (effects on the laws of the Member States)**

**45.** Omit Title 10.

**Omission of Title 11 (supplementary provisions regarding the Office)**

**46.** Omit Title 11.

**Omission of Title 11A (international registration)**

**47.** Omit Title 11A.

**Omission of Articles 107 to 109 (implementing regulation, procedure of Boards of Appeal and Committee)**

**48.** Omit Articles 107 to 109.

**Omission of Article 110 (transitional provision)**

**49.** In Article 110—

- (a) in point 1—
  - (i) omit from “Until” to “subject,”;
  - (ii) for “Community”, substitute “supplementary unregistered”;
- (b) omit point 2.

**Omission of Article 110a (provisions relating to the enlargement of the Community)**

**50.** Omit Article 110a.

**Omission of Article 111 (entry into force)**

**51.** Omit paragraphs 2 and 3.

**Omission of text after Title 12**

**52.** After Title 12, omit “This Regulation shall be binding in its entirety and directly applicable in all Member States.”.

## PART 2

### 2005 Regulations and the supplementary unregistered design right

**53.** The 2005 Regulations are amended as follows.

**Regulation 1: interpretation**

**54.** In regulation 1—

- (a) for the definitions in paragraph (2), substitute—
  - ““design court” has the meaning given by Article 81 of the Design Regulation;
  - “Design Regulation” means Council Regulation (EC) No 6/2002 of 12th December 2001 on Community Designs as amended by regulation 4(1) of, and Part 1 of Schedule 1 to, the Designs and International Trade Marks (Amendment etc.) (EU Exit) Regulations 2018; and
  - “supplementary unregistered design” has the meaning given by Article 1 of the Design Regulation.”;
- (b) omit paragraph (3).

**Regulation 1A: infringement proceedings**

**55.** In regulation 1A—

- (a) in paragraph (1) omit “Community”, in both places it appears;
- (b) in paragraph (2)—
  - (i) for “paragraphs (3) to”, substitute “paragraph”;
  - (ii) for “Community”, in both places where it appears, substitute “supplementary unregistered”;
- (c) omit paragraphs (3) and (4);
- (d) in paragraph (5)—

- (i) for “an”, in both places where it appears before “unregistered”, substitute “a supplementary”;
- (ii) omit “Community”, in both places where it appears.

**Regulation 1B: order for delivery up**

**56.** In regulation 1B—

- (a) in paragraph (1)(b)—
  - (i) for “Community”, in the first and second places where it appears, substitute “supplementary unregistered”;
  - (ii) omit “Community”, in the third place where it appears;
  - (iii) before “court”, in the second place where it appears, insert “design”;
- (b) in paragraph (2), before “court”, in both places where it appears, insert “design”;
- (c) in paragraph (4), for “Community”, substitute “supplementary unregistered”;
- (d) in paragraph (8), before “court”, insert “design”.

**Regulation 1C: order for disposal**

**57.** In regulation 1C—

- (a) in paragraph (1)—
  - (i) in the words before sub-paragraph (a), omit “Community”;
  - (ii) in sub-paragraph (a), for “Community”, substitute “supplementary unregistered”;
  - (iii) in sub-paragraph (b), before “court”, insert “design”;
- (b) in paragraph (2)—
  - (i) before “court”, insert “design”;
  - (ii) for “Community”, substitute “supplementary unregistered”;
- (c) in paragraphs (3) and (4), before “court”, insert “design”.

**Regulation 1D: meaning of “infringing article”**

**58.** In regulation 1D—

- (a) in paragraphs (2), (3)(b) and (4), for “Community”, in each place where it appears, substitute “supplementary unregistered”;
- (b) in paragraph (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(a)”.

**Regulation 2: unjustified threats: threats of infringement proceedings**

**59.** In regulation 2(1), for “Community”, in both places where it appears, substitute “supplementary unregistered”.

**Regulation 2B: unjustified threats: permitted communications**

**60.** In regulation 2B—

- (a) in paragraph (2), for “Community”, in each place where it appears, substitute “supplementary unregistered”;
- (b) in paragraph (3), before “court”, insert “design”;

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(a) 2018 c.16.

- (c) in paragraph (5)—
  - (i) omit sub-paragraphs (a)(i) and (ii);
  - (ii) in sub-paragraph (a)(iii)—
    - (aa) for “an”, substitute “a supplementary”;
    - (bb) omit “Community”;
  - (iii) in sub-paragraph (b), for “Community”, in both places where it appears, substitute “supplementary unregistered”.

**Regulation 2C, 2E and 2F: unjustified threats: general**

- 61.**—(1) In regulation 2C(2), for “Community”, substitute “supplementary unregistered”.
- (2) Omit regulation 2E.
- (3) In regulation 2F, for “Community”, substitute “supplementary unregistered”.

**Regulation 3: false representation**

- 62.** Omit regulation 3.

**Regulation 4: privileged communications**

- 63.** In regulation 4—
  - (a) in paragraph (1), for “any”, in the second place where it appears, substitute “a supplementary unregistered”;
  - (b) for paragraph (3), substitute—
    - “(3) In paragraph (2) “professional designs representative” means a person whose name appears on the special list of professional representatives for design matters maintained by the European Union Intellectual Property Office referred to in Article 78(4) of Council Regulation (EC) 6/2002 of 12th December 2001 on Community designs as it had effect immediately before exit day.”.

**Regulation 5 and the Schedule: services of the Crown**

- 64.**—(1) In regulation 5—
  - (a) in the heading, for “Community”, substitute “supplementary unregistered”;
  - (b) omit “registered Community designs and”;
  - (c) before “unregistered”, insert “supplementary”;
  - (d) omit “Community”, in the second place where it appears.
- (2) In the Schedule—
  - (a) for “Community”, in each place where it appears, substitute “supplementary unregistered”;
  - (b) before “court”, in each place where it appears, insert “design”;
  - (c) omit paragraph 5(6).

## Continuing unregistered Community designs

## PART 1

## Design Regulation and continuing unregistered Community designs

**1.**—(1) The Design Regulation applies to a continuing unregistered community design subject to the modifications in this Part.

(2) A reference in this Part to an Article is to an Article of the Design Regulation.

**Article 1: continuing unregistered Community design**

**2.** The Design Regulation has effect in relation to a continuing unregistered community design subject to the modifications in this Schedule.

**3.** In Article 1—

- (a) in the heading, before “Community”, insert “Continuing unregistered”;
- (b) in point 1, before “Community” and within the inverted commas, insert “continuing unregistered”;
- (c) in point 2(a)—
  - (i) for “an”, substitute “a”;
  - (ii) before “unregistered” and within the inverted commas, insert “continuing”;
- (d) omit points 2(b) and 3.

**Article 2: Office**

**4.** Omit Article 2.

**Article 3: definitions**

**5.** In Article 3, after the definition of “design”, insert “(ab) “European Union” means the countries that were part of the European Union immediately before exit day;”.

**Article 4: requirements for protection**

**6.** In Article 4(1), before “Community”, insert “continuing unregistered”.

**Article 5: novelty**

**7.** In Article 5(1)—

- (a) before “design” in the first place where it appears, insert “continuing unregistered Community”
- (b) in point (a)—
  - (i) omit “in the case of an unregistered Community design,”;
  - (ii) for “an”, substitute “a continuing”;
- (c) omit point (b).

**Article 6: individual character**

**8.** In Article 6(1)—

- (a) before “design” in the first place where it appears insert “continuing unregistered Community”
- (b) in point (a)—
  - (i) omit “in the case of an unregistered Community design,”;
  - (ii) for “an”, substitute “a continuing”;
- (c) omit point (b).

**Article 7: disclosure**

**9.** In Article 7—

- (a) in point 1—
  - (i) after “a”, in the first place where it appears, insert “continuing unregistered Community”;
  - (ii) omit “following registration or otherwise,”;
  - (iii) omit “or in Articles 5(1)(b) and 6(1)(b), as the case may be,”;
  - (iv) for “Community”, where it appears after “operating within the”, substitute “European Union”;
- (b) omit points 2 and 3.

**Articles 8 to 10: technical function, interconnections, public policy, morality and protection**

**10.** In Articles 8, 9 and 10(1), before “Community”, in each place where it appears, substitute “continuing unregistered”.

**Article 11: commencement and term of protection**

**11.** In Article 11—

- (a) in point 1—
  - (i) for “an”, substitute “a continuing”;
  - (ii) for “Community”, in the second place where it appears, substitute “European Union”;
- (b) in point 2, for “Community”, in both places in which it appears, substitute “European Union”.

**Articles 12 and 13: registered Community design: commencement, term of protection and renewal**

**12.** Omit Articles 12 and 13.

**Article 14: right to the Community design**

**13.** In Article 14—

- (a) before “Community”, in each place where it appears including in the heading, insert “continuing unregistered”;
- (b) in point 3, omit “or specified under national law”.

**Article 15: claims relating to the entitlement to a Community design**

**14.** In Article 15—

- (a) in the heading, for before “Community”, insert “continuing unregistered”;
- (b) in point 1—

- (i) for “an”, substitute “a continuing”;
- (ii) omit “, or a registered Community design has been applied for or registered in the name of,”;
- (iii) for “the Community”, substitute “that”;
- (c) in point 2, before “Community”, insert “continuing unregistered”;
- (d) in point 3—
  - (i) omit “the date of publication of a registered Community design or”;
  - (ii) for “an”, substitute “a continuing”;
  - (iii) for “the unregistered Community”, substitute “that”;
  - (iv) omit “applied for or”;
- (e) omit point 4.

**Articles 16 to 18: effects of a judgment on entitlement, presumptions, right to be cited**

**15.** Omit Articles 16 to 18.

**Article 19: rights conferred by the Community design**

**16.** In Article 19—

- (a) in the heading, before “Community”, insert “continuing unregistered”;
- (b) in point 1, for “registered”, substitute “continuing unregistered”;
- (c) in point 2, for “An”, where it first appears, substitute “A continuing”;
- (d) omit point 3.

**Article 20: limitation of the rights conferred by a Community design**

**17.** In Article 20—

- (a) in the heading and in point 1, before “Community”, insert “continuing unregistered”;
- (b) in point 2—
  - (i) in the words before point (a), before “Community”, insert “continuing unregistered”;
  - (ii) in points (a) and (b), for “Community”, substitute “United Kingdom”.

**Article 21: exhaustion of rights**

**18.** In Article 21—

- (a) before “Community”, in the first, second and fourth places where it appears, insert “continuing unregistered”;
- (b) before “Community”, in the third place where it appears, insert “United Kingdom or the”.

**Articles 22 and 23: prior use and government use**

**19.** Omit Articles 22 and 23.

**Article 24: declaration of invalidity**

**20.** In Article 24—

- (a) omit point 1;
- (b) in point 2—
  - (i) before “Community”, in both places where it appears, insert “continuing unregistered”;

- (ii) omit “or has been surrendered”;
- (c) in point 3—
  - (i) before “Community”, in the first place where it appears, insert “continuing unregistered”;
  - (ii) omit “Community”, in the second place where it appears.

**Article 25: grounds for invalidity**

**21.** In Article 25—

- (a) in point 1—
  - (i) in the words before subparagraph (a), before “Community”, insert “continuing unregistered”;
  - (ii) in point (c), omit “Community”;
- (iii) omit point (d);
- (iv) in point (e)—
  - (aa) omit “Community law or”;
  - (bb) omit “of the Member State”;
- (v) in point (f)—
  - (aa) omit “the”, in the second place where it appears;
  - (bb) omit “of a Member State”;
- (vi) in point (g), for “a Member State”, substitute “the European Union”;
- (b) in point 2, before “Community”, insert “continuing unregistered”;
- (c) in point 3—
  - (i) omit “(d),”;
  - (ii) omit “applicant for or”;
- (d) omit points 5 and 6.

**Article 26: consequences of invalidity**

**22.** In Article 26—

- (a) in point 1, before “Community”, insert “continuing unregistered”;
- (b) in point 2, in the words before subparagraph (a)—
  - (i) omit “the national provisions relating either to”;
  - (ii) before “Community”, in both places where it appears, insert “continuing unregistered”.

**Article 27: Community design rights as national design rights**

**23.** In Article 27—

- (a) for the heading, substitute “Property right”;
- (b) for points 1 to 4, substitute “A continuing unregistered Community design right is personal property (in Scotland, incorporeal moveable property) which subsists in accordance with this Regulation.”.

**Articles 28 to 31: transfer, rights in rem, levy and insolvency**

**24.** Omit Articles 28 to 31.

### **Article 32: licensing**

25. In Article 32—

- (a) in point 1—
  - (i) before “Community” in the first place where it appears, insert “continuing unregistered”;
  - (ii) omit “for the whole or part of the Community”;
- (b) in points 2 to 4, before “Community”, in every place where it appears, insert “continuing unregistered”;
- (c) omit points 5.

### **Articles 33 to 78: general provisions**

26. Omit Articles 33 to 78.

### **Article 79: Application of the Convention on jurisdiction and enforcement**

27. Omit Article 79.

### **Article 80: Community design courts**

28. Omit Article 80.

### **Article 81: The “design court” – jurisdiction over infringement and validity**

29. For Article 81, substitute—

#### *“Article 81*

#### **The “design court” – Jurisdiction over infringement and validity**

1. In this Regulation, “design court” means—
  - (a) in England and Wales, the High Court;
  - (b) in Scotland, the sheriff court and the Court of Session; and
  - (c) in Northern Ireland, the county court and the High Court.
2. The design court has exclusive jurisdiction—
  - (a) for infringement actions and actions in respect of threatened infringement of supplementary unregistered designs;
  - (b) for actions for declaration of non-infringement of supplementary unregistered designs;
  - (c) for actions for a declaration of invalidity of a supplementary unregistered design;
  - (d) for counterclaims for a declaration of invalidity of a continuing a supplementary unregistered design raised in connection with actions under (a).”

### **Articles 82 and 83**

30. For Articles 82 to 83 substitute—

#### *“Article 82*

#### **Pending proceedings concerning a continuing unregistered Community design**

1. This paragraph applies where on exit day a continuing unregistered Community design is the subject of proceedings which are pending (“pending proceedings”) before a court in the United Kingdom designated for the purposes of Article 80 of the Design Regulation as it had effect immediately before exit day.

2. Subject to sub-paragraphs (3) and (4), the provisions contained or referred to in Title IX of the Design Regulation (with the exception of Articles 86(2), (3), (4) and (5) and 91) shall continue to apply to the pending proceedings as if the United Kingdom were still a Member State with effect from exit day

3. Where the pending proceedings involve a claim for infringement or for threatened infringement of a continuing unregistered Community design, without prejudice to any other relief by way of damages, accounts or otherwise available to the proprietor of the design, the design court may grant an injunction to prohibit unauthorised use of the continuing unregistered Community design.

4. For the purposes of this paragraph proceedings are treated as pending on exit day if they were instituted but not finally determined before exit day.

#### *Article 83*

#### **Effect of injunction protecting an unregistered Community design**

1. This paragraph applies where immediately before exit day an injunction is in force prohibiting the performance of acts in the United Kingdom which infringe or would infringe a continuing unregistered Community design (a “relevant injunction”).

2. Subject to any order of the court to the contrary, a relevant injunction will continue to have effect and be enforceable to prohibit the performance of acts which infringe or would infringe the right in a continuing unregistered Community design to the same extent as before exit day.”.

#### **Article 84: action or counterclaim for a declaration of invalidity of a Community design**

**31.** In Article 84—

- (a) in the heading and in point 1, before “Community”, insert “continuing unregistered”;
- (b) in point 2—
  - (i) before “(4)”, insert “and”;
  - (ii) omit “and (5)”;
- (c) in point 3—
  - (i) before “Community”, insert “continuing unregistered”;
  - (ii) for “conditions” to “situated”, substitute “laws applying to the design courts”;
- (d) in point 4, before “Community”, insert “continuing unregistered”.

#### **Article 85: presumption of validity – defence as to the merits**

**32.** In Article 85—

- (a) omit point 1;
- (b) in point 2—
  - (i) for “an”, in the second place where it appears, substitute “a continuing unregistered”;
  - (ii) omit “Community”, in the second place where it appears;
  - (iii) before “Community”, in the third and fourth places where it appears, insert “continuing unregistered”.

#### **Article 86: judgments of invalidity**

**33.** In Article 86—

- (a) in point 1—
  - (i) in the words before point (a)—
    - (aa) omit “Community”, in the first place it appears;

- (bb) before “Community”, in the second place it appears, insert “continuing unregistered”;
- (b) in points (a) and (b), for “Community”, in each place where it appears, substitute “that”;
- (c) omit points 2 to 5.

**Articles 87 and 88: sanctions in actions for infringement**

**34.** Omit Articles 87 and 88.

**Article 89: sanctions in actions for infringement**

**35.** In Article 89—

- (a) in point 1—
  - (i) in the words before subparagraph (a)—
    - (aa) omit “Community”, in the first place it appears;
    - (bb) before “Community”, in the second place it appears, insert “continuing unregistered”;
  - (ii) in point (a), for “the Community”, substitute “that”;
  - (iii) in point (d), omit from “the law” to “international”;
- (b) omit point 2.

**Article 90: provisional measures, including protective measures**

**36.** In Article 90—

- (a) in point 1—
  - (i) omit “of a Member State”;
  - (ii) omit “Community”, in the first place it appears;
  - (iii) before “Community”, in the second place it appears, insert “continuing unregistered”;
  - (iv) omit from “under the law” to the end of the sentence;
- (b) in point 2, before “Community”, insert “continuing unregistered”;
- (c) in point 3—
  - (i) omit “Community”;
  - (ii) omit from “whose” to “(4)”;
  - (iii) omit from “, which” to “jurisdiction”.

**Articles 91 and 92: specific rules on related actions and further appeals**

**37.** Omit Articles 91 and 92.

**Article 93: supplementary provisions on the jurisdiction of national courts**

**38.** Omit Article 93.

**Article 94: obligation of the national court**

**39.** In Article 94—

- (a) for “national”, in the heading and the other time it appears, substitute “design”;
- (b) after “a”, the second times it appears, substitute “continuing unregistered Community”.

**Title 10**

40. Omit Title 10.

**Title 11: supplementary provisions concerning the Office**

41. Omit Title 11.

**Title 11A: international registration**

42. Omit Title 11A.

**Articles 107 to 109: implementing regulation, procedure of Boards of Appeal and Committee**

43. Omit Articles 107 to 109.

**Article 110: transitional provision**

44. In Article 110—

- (a) in point 1—
  - (i) omit from “Until” to “subject,”;
  - (ii) before “Community”, insert “continuing unregistered”;
- (b) omit point 2.

**Article 110a: provisions relating to the enlargement of the Community**

45. In Article 110a—

- (a) in point 1—
  - (i) for ““new Member States(s)”” substitute ““specified countries””;
  - (ii) before “Community”, the first time it appears, insert “continuing unregistered”;
  - (iii) omit “or applied for”;
  - (iv) for “Member States”, the second time it appears, substitute “specified countries”;
  - (v) omit from “in order” to the end of the sentence;
- (b) omit point 2;
- (c) in point 3—
  - (i) before “Community”, insert “continuing unregistered”;
  - (ii) for “a new Member State”, substitute “one or more specified countries”;
- (d) in point 4—
  - (i) omit “the applicant or”;
  - (ii) for “a new Member State”, substitute “one or more specified countries”;
  - (iii) before “Community”, insert “continuing unregistered”;
  - (iv) after “Article 25(1) omit “(d)”.
- (e) in point 5—
  - (i) omit the first sentence;
  - (ii) for “Community”, the second time it appears, substitute “European Union”;
  - (iii) for “an”, substitute “a continuing”.

**Article 111: entry into force**

46. Omit paragraphs 2 and 3.

## **Text after Title 12**

47. After Title 12, omit “This Regulation shall be binding in its entirety and directly applicable in all Member States.”.

## **PART 2**

### **2005 Regulations and continuing unregistered Community designs**

48. The 2005 Regulations apply to continuing unregistered community designs subject to the following modification.

#### **Regulation 1: interpretation**

49. In regulation 1—

(a) for the definitions in paragraph (2), substitute—

““design court” has the meaning given by Article 81 of the Design Regulation;

“Design Regulation” means Council Regulation (EC) No 6/2002 of 12th December 2001 on Community Designs as amended by regulation 5 of, and Part 1 of Schedule 2 to, the Designs and International Trade Marks (Amendment etc.) (EU Exit) Regulations 2018; and

“continuing unregistered Community design” has the meaning given by Article 1 of the Design Regulation.”;

(b) omit paragraph (3).

#### **Regulation 1A: infringement proceedings**

50. In regulation 1A—

(a) in paragraph (1) omit “Community”, in both places where it appears;

(b) in paragraph (2)—

(i) for “paragraphs (3) to”, substitute “paragraph”;

(ii) before “Community”, in both places where it appears, insert “continuing unregistered”;

(c) omit paragraphs (3) and (4); and

(d) in paragraph (5), for “an”, in both places where it appears, substitute “a continuing”.

#### **Regulation 1B: order for delivery up**

51. In regulation 1B—

(a) in paragraph (1)(b)—

(i) before “Community”, in the first and second places where it appears, insert “continuing unregistered”;

(ii) omit “Community”, in the third place where it appears;

(iii) before “court”, in the second place where it appears, insert “design”;

(b) in paragraph (2), before “court”, in both places where it appears, insert “design”;

(c) in paragraph (4), before “Community”, insert “continuing unregistered”;

(d) in paragraph (8), before “court”, insert “design”.

#### **Regulation 1C: order for disposal**

52. In regulation 1C—

- (a) in paragraph (1)—
  - (i) in the words before paragraph (a), omit “Community”;
  - (ii) in paragraph (a), before “Community”, insert “continuing unregistered”;
  - (iii) in sub-paragraph (b), before “court”, insert “design”;
- (b) in paragraph (2)—
  - (i) before “court, insert “design”;
  - (ii) before “Community”, insert “continuing unregistered”;
- (c) in paragraphs (3) and (4), before “court”, in each place where it appears, insert “design”.

**Regulation 1D: meaning of “infringing article”**

**53.** In regulation 1D—

- (a) in paragraph (2), before “Community”, insert “continuing unregistered”;
- (b) in paragraph (3)(b)—
  - (i) before “Community”, in the first place where it appears, insert “continuing unregistered”;
  - (ii) omit “Community”, in the second place where it appears;
- (c) in paragraph (4), before “Community, in both places where it appears, insert “continuing unregistered”;
- (d) in paragraph (5), for “an enforceable” to the end of the sentence, insert “anything which forms part of retained EU law as a result of section 3 or 4 of the European Union (Withdrawal) Act 2018(a).”.

**Regulation 2: unjustified threats: threats of infringement proceedings**

**54.** In regulation 2(1), before “Community”, in both places where it appears, insert “continuing unregistered”.

**Regulation 2B: unjustified threats: permitted communications**

**55.** In regulation 2B—

- (a) in paragraph (2), before “Community”, in each place where it appears, insert “continuing unregistered”;
- (b) in paragraph (3), before “court”, insert “design”;
- (c) in paragraph (5)—
  - (i) omit sub-paragraphs (a)(i) and (ii);
  - (ii) in sub-paragraph (b), before “Community”, in both places where it appears, insert “continuing unregistered”.

**Regulation 2C, 2E and 2F: unjustified threats: general**

- 56.**—(1) In regulation 2C(2), before “Community”, insert “continuing unregistered”.
- (2) Omit regulation 2E.
- (3) In regulation 2F, before “Community”, insert “continuing unregistered”.

**Regulation 3: false representation**

**57.** Omit regulation 3.

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(a) 2018 c.16.

#### **Regulation 4: privileged communications**

**58.** In regulation 4—

- (a) in paragraph (1), for “any”, in the second place where it appears, substitute “a continuing unregistered Community”;
- (b) for paragraph (3), substitute—
  - “(3) In paragraph (2) “professional designs representative” means a person whose name appears on—
    - (a) the special list of professional representatives for design matters maintained by the European Union Intellectual Property Office referred to in Article 78(4) of Council Regulation (EC) 6/2002 of 12th December 2001 on Community designs as it had effect immediately before exit day.”.

#### **Regulation 5 and the Schedule: services of the Crown**

**59.**—(1) In regulation 5—

- (a) in the heading, before “Community”, insert “continuing unregistered”;
  - (b) for “registered Community designs and” substitute “continuing”.
- (2) In the Schedule—
- (a) before “Community”, in each place where it appears, insert “continuing unregistered”;
  - (b) before “court”, in each place where it appears, insert “design”;
  - (c) omit paragraph 5(6).

### **SCHEDULE 3**

Regulations 5

#### **Amendments to the 1949 Act to make provision for certain registered Community designs and International designs to be treated as registered under the 1949 Act from exit day and about certain applications for registered Community designs made before exit day**

1. The 1949 Act is amended as follows.
2. Before section 13, insert—

##### **“Application of the Act to certain registered Community designs**

**12A.** Schedule 1A makes provision—

- (a) for registered Community designs (including certain designs whose registration has expired or which have been removed from the register) to be treated as registered under this Act with effect from exit day, and
- (b) about certain applications for registered Community designs made before exit day.

##### **Application of the Act to certain international designs**

**12B.** Schedule 1B makes provision—

- (a) for certain designs which are registered in the international register maintained by the International Bureau of the World Intellectual Property Organization in respect of which the European Union is designated (including certain designs whose registration has expired) to be treated as registered under this Act with effect from exit day, and

- (b) about certain applications made before exit day to register in the international register maintained by the International Bureau of the World Intellectual Property Organization a design in respect of which the European Union is designated.”.

3. After Schedule 1, insert—

## “SCHEDULE 1A

Section 12A

### EUROPEAN COMMUNITY REGISTERED DESIGNS

#### PART 1

##### Existing registered Community designs

###### **Designs registered as Community designs to be treated as registered under the Act**

1.—(1) A design which, immediately before exit day, is entered in the RCD register and has been published in the Community Designs Bulletin as mentioned in Article 73(1) (an “existing registered Community design”) is to be treated on and after exit day as if an application for its registration had been made, and it had been registered, under this Act.

(2) A registered design which comes into being by virtue of sub-paragraph (1) is referred to in this Schedule as a “re-registered design”.

(3) This Act applies to a re-registered design as it applies to other registered designs except as otherwise provided in this Schedule.

(4) For the purposes of this Act—

(a) the date of registration of a re-registered design is the date on which the existing registered Community design from which the re-registered design derives was treated as registered under the Community Design Regulation, and

(b) the date of the application of a re-registered design is the date treated, under Article 38, as the date of filing of the application for the registration of the existing registered Community design from which the re-registered design derives.

(5) Nothing in this Act authorises the imposition of a fee, or the making of provision by rules or regulations which authorises the imposition of a fee, in respect of any matter relating to a re-registered design (see instead provision made by regulations under Schedule 4 to the European Union (Withdrawal) Act 2018).

(6) The following provisions of this Act do not apply to a re-registered design—

(a) section 7A(6);

(b) section 18.

(7) In this Schedule—

(a) “the RCD register” means the register of registered Community designs maintained under Article 72;

(b) “the Community Design Regulation” means Council Regulation (EC) No 6/2002 of 12th December 2001 on Community Designs as it had effect immediately before exit day.

###### **Entries to be made in the register in relation to designs treated as registered under this Act**

2.—(1) The registrar must as soon as reasonably practicable on or after exit day enter a re-registered design in the register of designs.

(2) The obligation under section 22(1) (inspection of registered designs) applies to a re-registered design on and after the day on which the re-registered design is entered in the register (notwithstanding that no certificate of registration has been granted).

### **Opt out**

**3.—**(1) Subject to sub-paragraph (2), the proprietor of an existing registered Community design may at any time on or after exit day serve a notice on the registrar that the design is not to be treated as if it had been registered under this Act.

(2) A notice under sub-paragraph (1) may not be served where on or after exit day—

- (a) the re-registered design which derives from the existing registered Community design (or any interest in it)—
  - (i) has been assigned or otherwise transferred except by an assent by personal representatives, or
  - (ii) has had an interest created in it by a mortgage, licence or other instrument; or
- (b) proceedings based on the re-registered design have been initiated by the proprietor or with the proprietor's consent.

(3) A notice served under sub-paragraph (1) must—

- (a) identify the existing registered Community design; and
- (b) include the name and address of any person having an interest in the existing registered Community design which had effect before exit day in the United Kingdom and in respect of which an entry was recorded in the RCD register.

(4) A notice under sub-paragraph (1) is of no effect unless the proprietor in that notice certifies that any such person—

- (a) has been given not less than three months' notice of the proprietor's intention to serve such a notice; or
- (b) is not affected by, or if affected consents to, the notice.

(5) Where a notice has been served under sub-paragraph (1)—

- (a) the design ceases with effect from exit day to be treated as if it had been registered under this Act,
- (b) the obligation imposed on the registrar under paragraph 2 (entries to be made in the register in relation to designs treated as registered under this Act) ceases to have effect, and
- (c) the registrar must make any necessary amendments to the register.

### **Effect of claim of priority**

**4.—**(1) This paragraph applies where a right of priority has been claimed in accordance with Article 42 in respect of an existing registered Community design.

(2) The proprietor of the re-registered design which derives from the existing registered Community design is to be treated on and after exit day as having the same claim of priority.

(3) Accordingly, the relevant date for the purposes of establishing whether (or to what extent) the re-registered design is new or has individual character is the date of filing of the application for registration of a design in a convention country which formed the basis for the claim of priority.

### **Unregistered pre-exit transfers**

**5.—**(1) This paragraph applies where immediately before exit day there is a transfer of an existing registered Community design that has not been entered in the RCD register (a "relevant transfer").

(2) Section 19 (registration of assignments, etc.) applies in relation to a relevant transfer as if it were an assignment of the re-registered design which derives from the existing registered Community design which has been transferred.

### **Pre-exit licences to continue to have effect in the United Kingdom**

**6.—**(1) This paragraph applies where immediately before exit day an existing registered Community design is the subject of a licence which—

- (a) authorises the doing of acts in the United Kingdom which would otherwise infringe an existing registered Community design, and
- (b) does not expire on exit day (a “relevant licence”).

(2) Subject to any agreement to the contrary between the licensee and the licensor, a relevant licence continues to authorise the doing of acts which would otherwise infringe the right in the re-registered design which derives from the existing registered Community design.

(3) Sub-paragraph (2) is subject to the terms on which the relevant licence was granted, subject to such modifications as are necessary for their application in the United Kingdom.

(4) Section 19 (registration of assignments, etc.) applies in relation to a relevant licence as if it were a licence of the re-registered design deriving from the existing registered Community design which is subject to the relevant licence, subject to the following modification.

(5) Where immediately before exit day there is an entry in the RCD register relating to the relevant licence, section 19(5) does not apply to the licence until after the expiry of the period of 12 months beginning with the day after that on which exit day falls.

### **Security interests in existing registered Community designs**

**7.—**(1) This paragraph applies where immediately before exit day an existing registered Community design is the subject of an interest which has been granted as security and does not expire on exit day (a “relevant security interest”).

(2) References to the existing registered Community design in any document which grants or refers to the relevant security interest are to be read as including references to the re-registered design which derives from the existing registered Community design.

(3) Section 19 (registration of assignments, etc.) applies in relation to a relevant security interest as if it were a security interest granted in respect of the re-registered design deriving from the existing registered Community design which is subject to the relevant security interest, subject to the following modification.

(4) Where immediately before exit day there is an entry in the RCD register relating to the relevant security interest, section 19(5) does not apply to the document granting the interest until after the expiry of the period of 12 months beginning with the day after that on which exit day falls.

### **Continuity of rights in relation to an existing registered Community design**

**8.—**(1) References to an existing registered Community design or the registration of an existing registered Community design in any document entered into before exit day shall, unless there is evidence that the document was not intended to have effect in the United Kingdom, be read on and after exit day as including references to the re-registered design or the registration of the re-registered design which derives from the existing registered Community design.

(2) Subject to any agreement to the contrary, a consent granted before exit day by the proprietor of an existing registered Community design to the doing on or after exit day of an act in the United Kingdom which would otherwise infringe the right in the re-registered design which derives from the existing registered Community design is to be treated for the

purposes of section 7A as a consent to the doing of that act granted by the registered proprietor of the re-registered design.

#### **Pending proceedings concerning an existing registered Community design**

**9.—**(1) This paragraph applies where on exit day an existing registered Community design is the subject of proceedings which are pending (“pending proceedings”) before a court in the United Kingdom designated for the purposes of Article 80 (“a Community design court”).

(2) Subject to sub-paragraphs (3) and (4), the provisions contained or referred to in Title IX of the Community Design Regulation (with the exception of Articles 86(2), (4), (5) and 91) shall continue to apply to the pending proceedings as if the United Kingdom were still a Member State with effect from exit day.

(3) Where the pending proceedings involve a claim for infringement or for threatened infringement of an existing registered Community design, without prejudice to any other relief by way of damages, accounts or otherwise available to the proprietor of the existing registered Community design, the Community design court may grant an injunction to prohibit unauthorised use of the re-registered design which derives from the existing registered Community design.

(4) Where the pending proceedings involve a counterclaim for a declaration of invalidity in relation to an existing registered Community design, the Community design court may declare the registration of the re-registered design which derives from the existing registered Community design to be invalid (wholly or in part).

(5) Where the registration of a re-registered design is declared invalid to any extent, the registration shall to that extent be treated as having been invalid from the date of registration or from such other date as the court may direct.

(6) For the purposes of this paragraph proceedings are treated as pending on exit day if they were instituted but not finally determined before exit day.

#### **Effect of injunction protecting an existing registered Community design**

**10.—**(1) This paragraph applies where immediately before exit day an injunction is in force prohibiting the performance of acts in the United Kingdom which infringe or would infringe an existing registered Community design (a “relevant injunction”).

(2) Subject to any order of the court to the contrary, a relevant injunction will have effect and be enforceable to prohibit the performance of acts which infringe or would infringe the right in a re-registered design to the same extent as in relation to the existing registered Community design from which the re-registered design derives as if it were an injunction granted by the court.

## **PART 2**

### **Applications for registered Community designs which are pending at exit day**

#### **Applications for registration pending immediately before exit day**

**11.—**(1) In this Part references to an existing EU application are to an application for registration of a design under the Community Design Regulation in respect of which the conditions in sub-paragraph (2) are satisfied.

(2) The conditions referred to in sub-paragraph (1) are that immediately before exit day—

- (a) the application has been accorded a filing date pursuant to Article 38; and
- (b) the application has been neither granted nor refused by the European Union Intellectual Property Office.

**12.—**(1) Where a person who has filed an existing EU application or a successor in title of that person applies for registration of the same design under this Act within a period beginning with exit day and ending with the end of the relevant period, the relevant date for the purposes of establishing whether (or to what extent) the design which is the subject of the application under this Act is new or has individual character is the earliest of—

- (a) the filing date accorded pursuant to Article 38 to the existing EU application;
- (b) the date of priority (if any) claimed under Article 42 in respect of the existing EU application.

(2) In sub-paragraph (1), the “relevant period” means the period of nine months beginning with the day after that on which exit day falls.

(3) For the purposes of this Act—

- (a) where an application is made of the type referred to in sub-paragraph (1) within the period referred to in that sub-paragraph, the date of the application is the filing date accorded pursuant to Article 38 to the existing EU application, and
- (b) where the registrar registers a design which is the subject of an application of the type referred to in sub-paragraph (1) which is made within the period referred to in that sub-paragraph, the date of registration of the design is the filing date accorded pursuant to Article 38 to the existing EU application.

(4) Accordingly section 3C does not apply in relation to the design.

## PART 3

### Registered Community designs where publication is deferred at exit day

#### **Designs registered at the EUIPO immediately before exit day where publication is deferred**

**13.—**(1) In this Part references to a deferred design are to a design registered under the Community Design Regulation in respect of which the conditions in sub-paragraph (2) are satisfied.

(2) The conditions referred to in sub-paragraph (1) are that immediately before exit day—

- (a) the design is entered in the RCD register, and
- (b) publication of the design is deferred under Article 50.

**14.—**(1) This paragraph applies where the proprietor of a deferred design or a successor in title of that person applies for registration of the same design under this Act within a period beginning with exit day and ending with the end of the relevant period.

(2) Sections 3A(4) and 3B do not apply in relation to the application.

(3) The relevant date for the purposes of establishing whether (or to what extent) the design which is the same as the deferred design is new or has individual character is the earliest of—

- (a) the filing date accorded pursuant to Article 38 to the application for the deferred design;
- (b) the date of priority (if any) claimed under Article 42 in respect of the application for the deferred design.

(4) If the registrar registers a design which is the subject of an application of the type referred to in sub-paragraph (1) which is made within the period referred to in that sub-paragraph, the date of registration of the design is the date on which the deferred design which is the same as that design was treated as registered under the Community Design Regulation.

(5) Accordingly section 3C does not apply in relation to the design.

(6) In sub-paragraph (1), the “relevant period” means, the period of nine months beginning with the day after that on which exit day falls.

## PART 4

### Treatment of registered Community designs whose registrations expire during the period of six months ending on exit day

#### Application of Part

**15.**—(1) This Part applies to a design in respect of which the conditions in sub-paragraph (2) are satisfied (an “expired Community design”).

(2) The conditions referred to in sub-paragraph (1) are that—

- (a) immediately before the transitional period, the design was the subject of a registration under the Community Design Regulation,
- (b) the registration of the design expired during the transitional period (such that the design did not fall within paragraph 1(1)), and
- (c) the registration of the design would have been capable of being renewed under Article 13 for at least one further period of five years had a request for renewal been made under Article 13 prior to that expiry.

(3) An expired Community design is to be treated as if it were an existing registered Community design.

(4) The provisions of Part 1 of this Schedule apply to an expired Community design as they apply to an existing Community design subject to the provisions of this Part of the Schedule.

(5) Notwithstanding the entry in the register of designs (under paragraph 2, as applied by sub-paragraph (4)) of a re-registered design which derives from an expired Community design, the right in the re-registered design is expired until the period for which it subsists is extended in accordance with paragraph 16 (or the re-registered design is removed from the register in accordance with paragraph 16(3)).

(6) In this paragraph, “transitional period” means the period of six months ending with exit day.

#### Renewal of registration of an expired Community design

**16.**—(1) Where the registration of an expired Community design is renewed in accordance with Article 13(3) of the Continuing Community Design Regulation the registrar must, as soon as reasonably practicable after the date of such renewal, record in the register of designs the extension of the period for which subsists the right in the re-registered design which derives from the expired Community design.

(2) Where the period for which the right in a re-registered design subsists is extended under sub-paragraph (1), the right is to be treated as if it had never expired, with the result that—

- (a) anything done under or in relation to the right in the period beginning with exit day and ending with the extension under sub-paragraph (1) is to be treated as valid,
- (b) an act which would have constituted an infringement of the right if it had not expired is to be treated as an infringement, and
- (c) an act which would have constituted use of the design for the services of the Crown if the right had not expired is to be treated as such use.

(3) If the registration of an expired Community design is not renewed within the time period permitted by Article 13(3) of the Continuing Community Design Regulation—

- (a) the registrar must remove from the register of designs the re-registered design which derives from the expired Community design; and
- (b) the re-registered design ceases with effect from exit day to be treated as if it had been registered under this Act.

(4) In this Schedule “the Continuing Community Design Regulation” means the Council Regulation (EC) No 6/2002 of 12th December 2001 on Community Designs as it has effect in EU law.

## PART 5

### Restoration of registered Community design registrations and applications

#### **Restoration of registered Community design to the RCD register**

**17.**—(1) This paragraph applies where:

- (a) before exit day a registered Community design is removed from the RCD register pursuant to the Community Design Regulation, and
- (b) on or after exit day the registration of the said design is restored pursuant to Article 67 of the Continuing Community Design Regulation.

(2) Where the proprietor of the design files a request with the registrar within the period of six months beginning with the date of such restoration—

- (a) the design will be treated as if it were an existing registered Community design on exit day;
- (b) the provisions of Part 1 apply to the re-registered design which derives from the existing registered Community design.

#### **Restoration of application for registered Community design**

**18.**—(1) This paragraph applies where—

- (a) before exit day an application for a registered Community design is refused pursuant to the Community Design Regulation; and
- (b) on or after exit day the application is restored pursuant to Article 67 of the Continuing Community Design Regulation (a “relevant application”).

(2) Where a person who has filed a relevant application or a successor in title of that person applies for registration of the same design under this Act within a period beginning with exit day and ending with the end of the relevant period, the relevant date for the purposes of establishing whether the design which is the subject of the application under this Act is new or has individual character is the earliest of—

- (a) the filing date accorded pursuant to Article 38 to the relevant application;
- (b) the date of priority (if any) claimed under Article 42 in respect of the relevant application.

(3) In sub-paragraph (2), the “relevant period” means the period of nine months beginning with the day on which the application is restored as referred to in sub-paragraph (1)(b).

**PART 6**  
Interpretation

**Interpretation**

**19.** In this Schedule—

- “the Community Design Regulation” has the meaning given by paragraph 1(7);
- “the Continuing Community Design Regulation” has the meaning given by paragraph 16(4);
- “existing registered Community design” has the meaning given by paragraph 1(1);
- “expired Community design” has the meaning given by paragraph 15(1);
- “RCD register” has the meaning given by paragraph 1(7);
- “re-registered design” has the meaning given by paragraph 1(2).

**20.** References in this Schedule to an “Article” are to an Article of the Community Design Regulation.

**SCHEDULE 1B**  
**INTERNATIONAL DESIGNS**

Section 12B

**PART 1**

Existing international designs

**International designs in respect of which the European Union is designated to be treated as registered under the Act**

**1.—(1)** A design which, immediately before exit day, meets the requirements of sub-paragraph (2) (a “protected international registered design (EU)”) is to be treated on and after exit day as if an application for its registration had been made, and it had been registered, under this Act.

(2) The requirements referred to in sub-paragraph (1) are—

- (a) the design is the subject of an international registration which designates the European Union;
- (b) the international registration has been published by the International Bureau pursuant to Article 10(3) of the Geneva Act;
- (c) the European Union Intellectual Property Office has sent to the International Bureau a statement under Rule 18*bis* of the Common Regulations under the 1999 Act and the 1960 Act of the Hague Agreement to the effect that protection is granted in relation to the design, or the period under Article 106e(1) of the Community Design Regulation for communicating to the International Bureau a notification of refusal in respect of the international registration has expired; and
- (d) the effects of the international registration so far as they relate to the design have neither been—
  - (i) refused by the European Union Intellectual Property Office pursuant to Article 106e(1) of the Community Design Regulation; nor
  - (ii) declared wholly invalid pursuant to Article 106f of the Community Design Regulation.

(3) Where prior to exit day the effects of the international registration to which a protected international registered design (EU) is subject are declared partly invalid so far as relating to that design pursuant to Article 106f of the Community Design Regulation, the re-registered international design which derives from the protected international registered design (EU) has effect under this Act to the extent that the effects of the international registration so far as relating to the design have not been declared invalid.

(4) A registered design which comes into being by virtue of sub-paragraph (1) is referred to in this Schedule as a “re-registered international design”.

(5) This Act applies to a re-registered international design as it applies to other registered designs except as otherwise provided in this Schedule.

(6) For the purposes of this Act—

- (a) the date of registration of a re-registered international design is the date on which the protected international registered design (EU) from which the re-registered international design derives was treated as registered under the Geneva Act, and
- (b) the date of the application of a re-registered international design is the date treated, under Article 9 of the Geneva Act, as the filing date of the application for the registration of the protected international registered design (EU) from which the re-registered international design derives.

(7) Nothing in this Act authorises the imposition of a fee, or the making of provision by rules or regulations which authorises the imposition of a fee, in respect of any matter relating to a re-registered international design (see instead provision made by regulations under Schedule 4 to the European Union (Withdrawal) Act 2018).

(8) The following provisions of this Act do not apply to a re-registered international design—

- (a) section 7A(6);
- (b) section 18.

(9) In this Schedule—

- (a) “the Community Design Regulation” means Council Regulation (EC) No 6/2002 of 12th December 2001 on Community Designs as it had effect immediately before exit day;
- (b) “the Geneva Act” means the Geneva Act of the Hague Agreement Concerning the International Registration of Industrial Designs adopted by the Diplomatic Conference on 2 July 1999;
- (c) “the International Bureau” means the International Bureau of the World Intellectual Property Organization; and
- (d) “international registration” means the international registration of an industrial design effected according to the Geneva Act.

### **Entries to be made in the register in relation to designs treated as registered under this Act**

**2.—**(1) The registrar must as soon as reasonably practicable on or after exit day enter a re-registered international design in the register of designs.

(2) The obligation under section 22(1) (inspection of registered designs) applies to a re-registered international design on and after the day on which the re-registered international design is entered in the register (notwithstanding that no certificate of registration has been granted).

### **Opt out**

**3.—**(1) Subject to sub-paragraph (2), the holder of the international registration to which a protected international registered design (EU) is subject (“the proprietor”) may at any

time on or after exit day serve a notice on the registrar that the design is not to be treated as if it had been registered under this Act.

- (2) A notice under sub-paragraph (1) may not be served where on or after exit day—
  - (a) the re-registered international design which derives from the protected international registered design (EU) (or any interest in it)—
    - (i) has been assigned or otherwise transferred except by an assent by personal representatives, or
    - (ii) has had an interest created in it by a mortgage, licence or other instrument; or
  - (b) proceedings based on the re-registered international design have been initiated by the proprietor or with the proprietor's consent.
- (3) A notice served under sub-paragraph (1) must:
  - (a) identify the protected international registered design (EU); and
  - (b) include the name and address of any person who, to the best of the proprietor's knowledge, has an interest in the protected international registered design (EU).
- (4) A notice under sub-paragraph (1) is of no effect unless the proprietor in that notice certifies that any such person—
  - (a) has been given not less than three months' notice of the proprietor's intention to serve such a notice; or
  - (b) is not affected by, or if affected consents to, the notice.
- (5) Where a notice has been served under sub-paragraph (1)—
  - (a) the design ceases with effect from exit day to be treated as if it had been registered under this Act,
  - (b) the obligation imposed on the registrar under paragraph 2 (entries to be made in the register in relation to designs treated as registered under this Act) ceases to have effect, and
  - (c) the registrar must make any necessary amendments to the register.

#### **Effect of claim of priority**

**4.—**(1) This paragraph applies where a right of priority has been claimed in accordance with Article 6 of the Geneva Act in respect of the international registration to which a protected international registered design (EU) is subject.

(2) The proprietor of the re-registered international design which derives from the protected international registered design (EU) is to be treated on and after exit day as having the same claim of priority.

(3) Accordingly, the relevant date for the purposes of establishing whether (or to what extent) the re-registered international design is new or has individual character is the date of filing of the application for registration of a design in a convention country or a member of the World Trade Organization which formed the basis for the claim of priority.

#### **Unregistered pre-exit transfers**

- 5.—**(1) This paragraph applies where immediately before exit day—
- (a) there is a change in ownership of the international registration to which a protected international registered design (EU) is subject,
  - (b) the change in ownership has effect in respect of the European Union and the protected international registered design (EU), and
  - (c) the change in ownership has not been entered in the international register
- (a “relevant transfer”).

(2) Section 19 (registration of assignments, etc.) applies in relation to a relevant transfer as if it were an assignment of the re-registered international design which derives from the protected international registered design (EU) which has been transferred.

#### **Pre-exit licences to continue to have effect in the United Kingdom**

**6.—**(1) This paragraph applies where immediately before exit day a protected international registered design (EU) is the subject of a licence which—

- (a) authorises the doing of acts in the United Kingdom which would otherwise infringe the protected international registered design (EU), and
- (b) does not expire on exit day (a “relevant licence”).

(2) Subject to any agreement to the contrary between the licensee and the licensor, a relevant licence continues to authorise the doing of acts which would otherwise infringe the re-registered international design which derives from the protected international registered design (EU).

(3) Sub-paragraph (2) is subject to the terms on which the relevant licence was granted, subject to such modifications as are necessary for their application in the United Kingdom.

(4) Section 19 (registration of assignments, etc.) applies in relation to a relevant licence as if it were a licence of the re-registered international design deriving from the protected international registered design (EU) which is subject to the relevant licence, subject to the following modification.

(5) Section 19(5) does not apply to the licence until after the expiry of the period of 12 months beginning with the day after that on which exit day falls.

#### **Security interests in protected registered international registered designs (EU)**

**7.—**(1) This paragraph applies where immediately before exit day a protected international registered design (EU) is the subject of an interest which has been granted as security and does not expire on exit day (a “relevant security interest”).

(2) References to the protected international registered design (EU), or the international registration to which the protected international registered design (EU) is subject, in any document which grants or refers to the relevant security interest are to be read as including references to the re-registered international design which derives from the protected international registered design (EU).

(3) Section 19 (registration of assignments, etc.) applies in relation to a relevant security interest as if it were a security interest granted in respect of the re-registered design deriving from the protected international registered design (EU) which is subject to the relevant security interest, subject to the following modification.

(4) Section 19(5) does not apply to the interest until after the expiry of 12 months beginning with the day after that on which exit day falls.

#### **Continuity of rights in relation to a protected international registered design (EU)**

**8.—**(1) References to a protected international registered design (EU), or the international registration to which a protected international registered design (EU) is subject, in any document entered into before exit day shall, unless there is evidence that the document was not intended to have effect in the United Kingdom, be read on and after exit day as including references to the re-registered international design or the registration of the re-registered international design which derives from the protected international registered design (EU) .

(2) Subject to any agreement to the contrary, a consent granted before exit day by the holder of the international registration to which a protected international registered design (EU) is subject to the doing on or after exit day of an act in the United Kingdom which would otherwise infringe the re-registered international design which derives from the

protected international registered design (EU) is to be treated for the purposes of section 7A as a consent to the doing of that act granted by the registered proprietor of the re-registered international design.

#### **Pending proceedings concerning a protected international registered design (EU)**

**9.—(1)** This paragraph applies where on exit day a protected international registered design (EU) is the subject of proceedings which are pending (“pending proceedings”) before a court in the United Kingdom designated for the purposes of Article 80 (“a Community design court”).

(2) Subject to sub-paragraphs (3) and (4), the provisions contained or referred to in Title IX of the Community Design Regulation (with the exceptions of Articles 86(2), (4), (5) and 91) shall continue to apply to the pending proceedings as if the United Kingdom were still a Member State with effect from exit day.

(3) Where the pending proceedings involve a claim for infringement or for threatened infringement of a protected international registered design (EU), without prejudice to any other relief by way of damages, accounts or otherwise available to the holder of the international registration to which the protected international registered design (EU) is subject, the Community design court may grant an injunction to prohibit unauthorised use of the re-registered international design which derives from the protected international registered design (EU).

(4) Where the pending proceedings involve a counterclaim for a declaration of invalidity in relation to a protected international registered design (EU), the Community design court may declare the registration of the re-registered international design which derives from the protected international registered design (EU) to be invalid (wholly or in part).

(5) Where the registration of a re-registered international design is declared invalid to any extent, the registration shall to that extent be treated as having been invalid from the date of registration or from such other date as the court may direct.

(6) For the purposes of this paragraph proceedings are treated as pending on exit day if they were instituted but not finally determined before exit day.

#### **Effect of injunction protecting a protected international registered design (EU)**

**10.—(1)** This paragraph applies where immediately before exit day an injunction is in force prohibiting the performance of acts in the United Kingdom which infringe or would infringe a protected international registered design (EU) (a “relevant injunction”).

(2) Subject to any order of the court to the contrary, a relevant injunction will have effect and be enforceable to prohibit the performance of acts which infringe or would infringe the right in a re-registered international design to the same extent as in relation to the protected international registered design (EU) from which the re-registered international design derives as if it were an injunction granted by the court.

## **PART 2**

**International registrations in respect of which the period for refusal has not expired before exit day etc.**

**11.—(1)** In this Part references to a “pending international design (EU)” are to a design which, immediately before exit day, meets the requirements of sub-paragraph (2).

(2) The requirements referred to in sub-paragraph (1) are—

- (a) the design is the subject of an international registration which designates the European Union;
- (b) the design is not the subject of—

- (i) a refusal by the European Union Intellectual Property Office pursuant to Article 106e(1) of the Community Design Regulation; or
- (ii) a statement by the European Union Intellectual Property Office under Rule 18*bis* of the Common Regulations under the 1999 Act and the 1960 Act of the Hague Agreement to the effect that protection is granted in relation to it;
- (c) the international registration to which the design is subject—
  - (i) has not been published by the International Bureau pursuant to Article 10(3) of the Geneva Act; or
  - (ii) has been published by the International Bureau but the period under Article 106e(1) of the Community Design Regulation for communicating to the International Bureau a notification of refusal in respect of the international registration has not expired.

**12.—**(1) Where the holder of the international registration to which a pending international design (EU) is subject, or a successor in title of that person, makes an application for registration of the same design under this Act within a period beginning with exit day and ending with the end of the relevant period, the relevant date for the purposes of establishing whether (or to what extent) the design which is the subject of the application under this Act is new or has individual character is the earliest of—

- (a) the date on which the international registration was treated as registered pursuant to Article 10(2) of the Geneva Act;
- (b) the date of priority (if any) claimed under Article 41 of the Community Design Regulation as applied by Article 106a of that Regulation in respect of the pending international design (EU).

(2) In sub-paragraph (1), the “relevant period” means the period of nine months beginning with the day after that on which exit day falls.

(3) For the purposes of this Act—

- (a) where an application is made of the type referred to in sub-paragraph (1) within the period referred to in that sub-paragraph, the date of the application is the date on which the international registration to which the pending international design (EU) is subject was treated as registered pursuant to Article 10(2) of the Geneva Act, and
- (b) where the registrar registers a design which is the subject of an application of the type referred to in sub-paragraph (1) which is made within the period referred to in that sub-paragraph, the date of registration of the design is the date on which the international registration to which the pending international design (EU) is subject was treated as registered pursuant to Article 10(2) of the Geneva Act.

(4) Accordingly section 3C does not apply in relation to the design.

## PART 3

Treatment of international registered designs whose registrations expire during the period of six months ending on exit day

### **Application of Part**

**13.—**(1) This Part applies to a design which met the requirements set out in paragraph 1(2)(b) to (d) in respect of which the conditions in sub-paragraph (2) are satisfied (an “expired international design”).

(2) The conditions referred to in sub-paragraph (1) are that—

- (a) immediately before the transitional period, the design was the subject of an international registration which designated the European Union,

- (b) the international registration expired during the transitional period (such that the design did not fall within paragraph 1(1)), and
- (c) the renewal of the international registration would have been capable of being effected for the European Union in accordance with Article 17 of the Geneva Act for at least one further period of five years had a request for renewal been made in accordance with Article 17(2) prior to that expiry.

(3) An expired international design is to be treated as if it were a protected international registered design (EU).

(4) The provisions of Part 1 of this Schedule apply to an expired international design as they apply to a protected international registered design (EU) subject to the provisions of this Part of the Schedule.

(5) Notwithstanding the entry in the register of designs (under paragraph 2, as applied by sub-paragraph (4)) of a re-registered international design which derives from an expired international design, the right in the re-registered international design is expired until it is extended in accordance with paragraph 14 (or the re-registered design is removed from the register in accordance with paragraph 14(3)).

(6) In this paragraph, “transitional period” means the period of six months ending with exit day.

#### **Renewal of registration of an expired international design**

**14.—**(1) Where within the period beginning with exit day and ending with the end of the relevant period—

- (a) the international registration to which an expired international design was subject is renewed in accordance with Article 17(2) of the Geneva Act,
- (b) the renewal has effect in respect of the European Union and the expired international design, and
- (c) the holder of that international registration notifies the registrar of such renewal, the registrar must, as soon as reasonably practicable after the date of notification, record in the register of designs the extension of the period for which subsists the right in the re-registered international design which derives from the expired international design.

(2) Where the period for which the right in a re-registered international design subsists is extended under sub-paragraph (1), the right is to be treated as if it had never expired, with the result that—

- (a) anything done under or in relation to the right in the period beginning with exit day and ending with the extension under sub-paragraph (1) is to be treated as valid,
- (b) an act which would have constituted an infringement of the right if it had not expired is to be treated as an infringement, and
- (c) an act which would have constituted use of the design for the services of the Crown if the right had not expired is to be treated as such use.

(3) If within the period referred to in sub-paragraph (1) the holder fails to notify the registrar in accordance with sub-paragraph (1)(c)—

- (a) the registrar must remove from the register of designs the re-registered international design which derives from the expired international design, and
- (b) the re-registered international design ceases with effect from exit day to be treated as if it had been registered under this Act.

(4) In sub-paragraph (1), the “relevant period” means the period of nine months beginning with the day after that on which exit day falls.

## PART 4

### Interpretation

#### Interpretation

15.—(1) In this Schedule—

- “the Community Design Regulation” has the meaning given by paragraph 1(9);
- “expired international design” has the meaning given by paragraph 13(1);
- “the Geneva Act” has the meaning given by paragraph 1(9);
- “the International Bureau” has the meaning given by paragraph 1(9);
- “international registration” has the meaning given by paragraph 1(9);
- “protected international registered design (EU)” has the meaning given by paragraph 1(1);
- “re-registered international design” has the meaning given by paragraph 1(4).

(2) For the purposes of paragraphs 1(2)(b) and 11(2)(c), where the international registration to which a design is subject has not been published in its entirety but the design itself has been by virtue of a request made under Article 11(4)(a) of the Geneva Act, the international registration is to be treated as having been published.”.

## SCHEDULE 4

Regulation 6

### Amendments to the 1994 Act to make provision for certain international trade marks protected in the European Union to be treated as registered trade marks and about certain applications for such marks and transformation applications

1. The 1994 Act is amended as follows.
2. After section 54(a) (and before the italic heading before section 55), insert—

**“Certain international trade marks protected in the European Union to be treated as registered trade marks**

**54A.** Schedule 2B makes provision for international trade marks protected in the European Union (including certain expired marks) to be treated as registered trade marks with effect from exit day and about certain applications for the protection of an international trade mark in the European Union and transformation applications made before exit day.”

3. Before Schedule 3, insert—

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(a) Section 54 was amended by the Intellectual Property (Unjustified Threats) Act 2017 (c. 14), section 2(4).

INTERNATIONAL TRADE MARKS PROTECTED IN THE  
EUROPEAN UNION

PART 1

Existing international trade marks protected in the European Union

**An international trade mark protected in the European Union to be treated as registered under this Act**

1.—(1) A trade mark which, immediately before exit day, is an international trade mark which is protected in the European Union in accordance with Article 189(2) of the European Union Trade Mark Regulation (an “existing IR(EU)”) is to be treated on and after exit day as if an application had been made, and the trade mark had been registered, under this Act in respect of the same goods or services in respect of which the international trade mark is protected in the European Union.

(2) Where the international registration to which an international trade mark is subject is sub-divided to reflect the making of more than one request for territorial extension to the European Union under Article 3ter there is to be deemed for the purposes of sub-paragraph (1) to be a separate trade mark in respect of the goods or services covered by each sub-division of the registration.

(3) Where the international registration to which an international trade mark is subject has been created by virtue of Rule 27(2) (recording of partial change in ownership) (a “separate international registration”), it is irrelevant for the purposes of the application of sub-paragraph (2) to that separate international registration that the requests for territorial extension were made before the separate international registration was created.

(4) A registered trade mark which comes into being by virtue of sub-paragraph (1) is referred to in this Act as a comparable trade mark (IR).

(5) This Act applies to a comparable trade mark (IR) as it applies to other registered trade marks except as otherwise provided in this Schedule.

(6) A comparable trade mark (IR) is deemed for the purposes of this Act to be registered as of—

- (a) where the protection in the European Union of the existing IR(EU) from which the comparable trade mark (IR) derives resulted from a request for territorial extension under Article 3ter(1) (request mentioned in original application), the date of registration of the existing IR(EU) accorded pursuant to Article 3(4); or
- (b) where the protection in the European Union of the existing IR(EU) from which the comparable trade mark (IR) derives resulted from a request for territorial extension under Article 3ter(2) (subsequent request), the date on which the request was recorded in the International Register,

and that date is deemed for the purposes of this Act to be the date of registration.

(7) Section 40(3) and (4) does not apply to the registration of a comparable trade mark (IR) under this Part.

(8) Section 67(1) applies in relation to the provision of information and the inspection of documents relating to a comparable trade mark (IR) notwithstanding that there will have been no application under this Act for the registration of the trade mark (and so no publication of an application).

(9) Nothing in this Act authorises the imposition of a fee, or the making of provision by rules or regulations which authorises the imposition of a fee, in respect of any matter

relating to a comparable trade mark (IR) (see instead provision made by regulations under Schedule 4 to the European Union (Withdrawal) Act 2018).

(10) For the purposes of this Act—

- (a) the date of filing of an application for registration of a comparable trade mark (IR) is the same date as the deemed date of registration of the comparable trade mark (IR) under sub-paragraph (6);
- (b) references to the date of application for registration of a comparable trade mark (IR) are to the date of filing of the application;
- (c) where an earlier trade mark is a comparable trade mark (IR), references to the completion of the registration procedure for the earlier trade mark are to publication by the European Union Intellectual Property Office of the matters referred to in Article 190(2) of the European Union Trade Mark Regulation in respect of the existing IR(EU) from which the comparable trade mark (IR) derives.

(11) In this Schedule—

- (a) “the International Register” means the register of trade marks maintained by the International Bureau for the purposes of the Madrid Protocol;
- (b) “international registration” means a registration made in the International Register in accordance with the Madrid Protocol;
- (c) “international trade mark” means a trade mark which is the subject of an international registration.

## **Opt out**

2.—(1) Subject to sub-paragraphs (2) and (6), the proprietor of an existing IR(EU) may, at any time on or after exit day, serve notice on the registrar that the trade mark is not to be treated as if the trade mark had been registered under this Act (an “opt out notice”).

(2) An opt out notice may not be served where on or after exit day—

- (a) the comparable trade mark (IR) has been put to use in the United Kingdom by the proprietor or with the proprietor’s consent (which use includes affixing the trade mark to goods or to the packaging of goods in the United Kingdom solely for export purposes);
- (b) the comparable trade mark (IR) (or any right in or under it) has been made the subject of an assignment, licence, security interest or any other agreement or document except for an assent by personal representatives in relation to the comparable trade mark (IR); or
- (c) proceedings based on the comparable trade mark (IR) have been initiated by the proprietor or with the proprietor’s consent.

(3) An opt out notice must—

- (a) identify the number of the international registration to which the existing IR(EU) to which the notice relates is subject; and
- (b) include the name and address of any person having an interest in the existing IR(EU) which had effect before exit day in the United Kingdom, and in respect of which an entry was recorded in the International Register.

(4) An opt out notice is of no effect unless the proprietor in that notice certifies that any such person—

- (a) has been given not less than three months’ notice of the proprietor’s intention to serve an opt out notice; or
- (b) is not affected or if affected, consents to the opt out.

(5) Where a notice has been served in accordance with this paragraph—

- (a) the comparable trade mark (IR) which derives from the existing IR(EU) ceases with effect from exit day to be treated as if it had been registered under this Act; and
  - (b) the registrar must, where particulars of the comparable trade mark (IR) have been entered in the register, remove the comparable trade mark (IR) from the register.
- (6) Where an international trade mark which is protected in the European Union is treated as being more than one trade mark by virtue of paragraph 1(2)—
- (a) an opt out notice must relate to all of the existing IR(EU)s which (by virtue of paragraph 1(2)) derive from the international trade mark;
  - (b) the references in sub-paragraph (2) to the comparable trade mark (IR) are to be read as references to any of the comparable trade marks (IR) which derive from the existing IR(EU)s to which the opt out notice relates; and
  - (c) the references in sub-paragraph (5) to the comparable trade mark (IR) are to be read as references to all of the comparable trade marks (IR) which derive from the existing IR(EU)s to which the notice relates.

### **Entries to be made in the register in relation to a comparable trade mark (IR)**

3.—(1) The registrar must as soon as reasonably practicable after exit day enter a comparable trade mark (IR) in the register.

(2) The particulars of the goods or services in respect of which the comparable trade mark (IR) is treated as if it had been registered must be taken from the English language version of the entry in the International Register for the corresponding (IR).

(3) Where on or after exit day the entry in the International Register containing the particulars referred to in sub-paragraph (2) is modified to correct an error pursuant to Rule 28, a person having a sufficient interest may apply to the registrar for rectification of the register by the substitution of the English language version of the entry for the corresponding (IR) in the International Register as modified.

(4) In this Schedule, the “corresponding (IR)”, in relation to a comparable trade mark (IR), means the existing IR(EU) from which the comparable trade mark (IR) derives.

### **Comparable trade mark (IR) which derives from a mark treated as an EU Collective Mark or EU Certification Mark**

4.—(1) This paragraph applies where the existing IR(EU) from which a comparable trade mark (IR) derives is dealt with for the purposes of the European Union Trade Mark Regulation as an EU collective mark or an EU certification mark.

(2) The comparable trade mark (IR) is to be treated as either a collective mark or a certification mark, as the case may be.

(3) The proprietor of the comparable trade mark (IR) must, following notice from the registrar, file with the registrar regulations governing the use of the international trade mark, submitted pursuant to the European Union Trade Mark Regulation, which had effect immediately before exit day.

(4) Where the regulations referred to in sub-paragraph (3) are in a language other than English they must be filed together with a translation into English verified to the satisfaction of the registrar as corresponding to the original text.

(5) Paragraph 9 of Schedule 1 and paragraph 10 of Schedule 2 apply in relation to the translation referred to in sub-paragraph (4) as they apply in relation to the regulations referred to in sub-paragraph (3).

(6) Where the regulations or any translation are not filed in accordance with the above provisions—

- (a) the registrar must remove the comparable trade mark (IR) from the register; and

- (b) the rights of the proprietor shall be deemed to have ceased as from the date of removal.

### **Renewal of a comparable trade mark (IR) which expires within six months after exit day**

5.—(1) This paragraph applies to the renewal of the registration of a comparable trade mark (IR) which expires within the period beginning with exit day and ending with the end of the relevant period (and accordingly section 43(1) to (3A) does not apply).

(2) The registration of the comparable trade mark (IR) may be renewed at the request of the proprietor before the expiry of the registration.

(3) Where the registration of the comparable trade mark (IR) is not renewed in accordance with sub-paragraph (2)—

- (a) on, or as soon as reasonably practicable after, the expiry of the registration, the registrar must notify the proprietor that the registration has expired and of the manner in which the registration may be renewed; and
- (b) a request for renewal must be made within the period of six months beginning with the date of the notice.

(4) If a request for renewal is made in respect of only some of the goods or services for which the comparable trade mark (IR) is registered, the registration is to be renewed for those goods or services only.

(5) If the registration is not renewed in accordance with the above provisions, the registrar must remove the comparable trade mark (IR) from the register.

(6) Section 43(4) and (6) applies to the registration of a comparable trade mark (IR) which is renewed in accordance with the above provisions.

(7) In sub-paragraph (1), the “relevant period” means the period of six months beginning with the day after that on which exit day falls.

### **Restoration of a comparable trade mark (IR)**

6. Where a comparable trade mark (IR) is removed from the register pursuant to paragraph 5, the rules relating to the restoration of the registration of a trade mark (referred to in section 43(5)) apply in relation to the restoration of the comparable trade mark (IR) to the register.

### **Raising of relative grounds in opposition proceedings in case of non-use**

7.—(1) Section 6A applies where an earlier trade mark is a comparable trade mark (IR), subject to the modifications set out below.

(2) Where the relevant period referred to in section 6A(3)(a) (the “five-year period”) has expired before exit day—

- (a) the references in section 6A(3) and (6) to the earlier trade mark are to be treated as references to the corresponding (IR); and
- (b) the references in section 6A(3) and (4) to the United Kingdom include the European Union.

(3) Where exit day falls within the five-year period, in respect of that part of the five-year period which falls before exit day—

- (a) the references in section 6A(3) and (6) to the earlier trade mark are to be treated as references to the corresponding (IR); and
- (b) the references in section 6A to the United Kingdom include the European Union.

**Non-use as defence in infringement proceedings and revocation of registration of a comparable trade mark (IR)**

**8.**—(1) Sections 11A and 46 apply in relation to a comparable trade mark (IR), subject to the modifications set out below.

(2) Where the period of five years referred to in sections 11A(3)(a) and 46(1)(a) or (b) (the “five-year period”) has expired before exit day—

- (a) the references in sections 11A(3) and (insofar as they relate to use of a trade mark) 46 to a trade mark are to be treated as references to the corresponding (IR); and
- (b) the references in sections 11A and 46 to the United Kingdom include the European Union.

(3) Where exit day falls within the five-year period, in respect of that part of the five-year period which falls before exit day—

- (a) the references in sections 11A(3) and (insofar as they relate to use of a trade mark) 46 to a trade mark, are to be treated as references to the corresponding (IR); and
- (b) the references in sections 11A and 46 to the United Kingdom include the European Union.

**Grounds for invalidity of registration of a trade mark based upon an earlier comparable trade mark (IR)**

**9.**—(1) Section 47 applies where an earlier trade mark is a comparable trade mark (IR), subject to the modifications set out below.

(2) Where the period of five years referred to in sections 47(2A)(a) and 47(2B) (the “five-year period”) has expired before exit day—

- (a) the references in section 47(2B) and (2E) to the earlier trade mark are to be treated as references to the corresponding (IR); and
- (b) the references in section 47 to the United Kingdom include the European Union.

(3) Where exit day falls within the five-year period, in respect of that part of the five-year period which falls before exit day—

- (a) the references in section 47(2B) and (2E) to the earlier trade mark are to be treated as references to the corresponding (IR); and
- (b) the references in section 47 to the United Kingdom include the European Union.

**Reputation of a comparable trade mark (IR)**

**10.**—(1) Sections 5 and 10 apply in relation to a comparable trade mark (IR), subject to the modifications set out below.

(2) Where the reputation of a comparable trade mark (IR) falls to be considered in respect of any time before exit day, references in sections 5(3) and 10(3) to—

- (a) the reputation of the mark are to be treated as references to the reputation of the corresponding (IR); and
- (b) the United Kingdom include the European Union.

**Rights conferred by registered trade mark**

**11.** Section 9 applies in relation to a comparable trade mark (IR) but as if—

- (a) the words in brackets in subsection (3) referring to section 40(3) were replaced with a reference to paragraph 1(6) of this Schedule; and
- (b) the proviso in subsection (3) were omitted.

### **Effect of disclaimer**

**12.** Where, immediately before exit day, the protection in the European Union of an existing IR(EU) is subject to a disclaimer recorded in the International Register, the registration of the comparable trade mark (IR) which derives from the existing IR(EU) is to be treated on and after exit day as subject to the same disclaimer (and section 13 applies accordingly but as if the reference to “publication” in subsection (2) was omitted).

### **Effect of claim of priority**

**13.—**(1) This paragraph applies where—

- (a) a right of priority was claimed in respect of an international application for protection of a trade mark in accordance with Rule 9(4)(iv);
- (b) immediately before exit day there is an entry in the International Register in respect of that trade mark containing particulars of that claim of priority (a “claim of priority”);
- (c) the trade mark is an existing IR(EU).

(2) Subject to sub-paragraph (4), the proprietor of the comparable trade mark (IR) which derives from the existing IR(EU) is to be treated on and after exit day as having the same claim of priority.

(3) Accordingly, the relevant date for the purposes of establishing, in relation to the comparable trade mark (IR), which rights take precedence is the date of filing of the application for a trade mark in a Convention country which formed the basis for the claim of priority.

(4) Where the protection in the European Union of the existing IR(EU) resulted from a request for territorial extension under Article 3ter(2), the proprietor of the comparable trade mark (IR) which derives from the existing IR(EU) is to be treated on and after exit day as having the same claim of priority only where the request for territorial extension was recorded in the International Register within a period of six months beginning with the day after the priority date recorded in the International Register in respect of the international application referred to in sub-paragraph (1)(a).

### **Effect of seniority claim**

**14.—**(1) This paragraph applies where immediately before exit day an existing IR(EU) has a valid claim to seniority of a trade mark which trade mark (the “senior mark”) is a registered trade mark or a protected international trade mark (UK).

(2) The comparable trade mark (IR) which derives from the existing IR(EU) is to be treated on and after exit day as if it had a valid claim to seniority of the senior mark.

(3) Accordingly, where the proprietor of the comparable trade mark (IR) surrenders the senior mark or allows it to lapse (whether wholly or partially), subject to paragraph 15, the proprietor of the comparable trade mark (IR) is deemed to continue to have the same rights as the proprietor would have had if the senior mark had continued to be registered in respect of all the goods or services for which it was registered prior to the surrender or lapse.

(4) An existing IR(EU) has a valid claim to seniority of a trade mark where—

- (a) a claim has been filed in accordance with Article 191 or 192 of the European Union Trade Mark Regulation in respect of the international registration to which the existing IR(EU) is subject; and
- (b) the seniority so claimed has not lapsed in the circumstances referred to in Article 39 of that Regulation (as it applies to international registrations under Article 182 of that Regulation).

### **Determination of invalidity and liability to revocation in relation to claims of seniority**

**15.**—(1) Where pursuant to paragraph 14 a comparable trade mark (IR) is treated as if it had a valid claim to seniority of a registered trade mark which has been—

- (a) removed from the register under section 43; or
- (b) surrendered under section 45,

any person may apply to the registrar or to the court for the declaration set out in subparagraph (2).

(2) The declaration is that if the trade mark had not been so removed or surrendered, the registration of the trade mark would have been liable to be revoked under section 46 with effect from a date specified in the declaration or declared invalid under section 47.

(3) Where the declaration is that had the trade mark not been so removed or surrendered the registration of it would have been liable to be—

- (a) revoked under section 46 with effect from a date prior to—
  - (i) where there has been no claim of priority pursuant to Article 35 of the European Union Trade Mark Regulation (as it applies to international registrations under Article 182 of that Regulation) in respect of the existing IR(EU) from which the comparable trade mark (IR) derives, the deemed date of registration of the comparable trade mark (IR); or
  - (ii) where there has been a claim of priority, the priority date accorded pursuant to a right of priority claimed pursuant to Article 35 of the European Union Trade Mark Regulation in respect of the existing IR(EU) from which the comparable trade mark (IR) derives; or
- (b) declared invalid under section 47,

the seniority claimed for the comparable trade mark (IR) is to be treated as if it never had effect.

(4) Where pursuant to paragraph 14 a comparable trade mark (IR) is treated as if it had a valid claim to seniority of a protected international trade mark (UK) which has been—

- (a) removed from the International Register; or
- (b) surrendered under the Madrid Protocol,

any person may apply to the registrar or to the court for the declaration set out in subparagraph (5).

(5) The declaration is that, if the trade mark had not been so removed or surrendered, the protection of the mark in the United Kingdom would have been liable to be revoked under section 46 with effect from a date specified in the declaration or declared invalid under section 47.

(6) Where the declaration is that had the trade mark not been so removed or surrendered the protection of the mark in the United Kingdom would have been liable to be—

- (a) revoked under section 46 with effect from a date prior to—
  - (i) where there has been no claim of priority pursuant to Article 35 of the European Union Trade Mark Regulation (as it applies to international registrations under Article 182 of that Regulation) in respect of the existing IR(EU) from which the comparable trade mark (IR) derives, the deemed date of registration of the comparable trade mark (IR); or
  - (ii) where there has been a claim of priority, the priority date accorded pursuant to a right of priority claimed pursuant to Article 35 of the European Union Trade Mark Regulation in respect of the existing IR(EU) from which the comparable trade mark (IR) derives; or
- (b) declared invalid under section 47,

the seniority claimed for the comparable trade mark (IR) is to be treated as if it never had effect.

(7) Where the protection in the European Union of an existing IR(EU) resulted from a request for territorial extension under Article 3ter(2), a right of priority claimed pursuant to Article 35 of the European Union Trade Mark Regulation in respect of the existing IR(EU) is to be disregarded for the purposes of sub-paragraphs (3)(a)(ii) and (6)(a)(ii) unless the request for territorial extension was recorded in the International Register within a period of six months beginning with the day after the priority date recorded in the International Register in respect of the international application for protection of the trade mark which is the same as the one in respect of which the request for territorial extension was filed.

(8) References in sub-paragraphs (5) and (6) to sections 46 and 47 are to those sections as they apply to a protected international trade mark (UK) under an order made pursuant to section 54.

(9) Where a trade mark has been surrendered or allowed to lapse in respect of some only of the goods or services for which it is registered, the declaration in sub-paragraphs (2) and (5) is that if the goods or services had not been removed from the registration, the registration of the trade mark would have been liable to be revoked under section 46 with effect from a date specified in the declaration or declared invalid under section 47 and sub-paragraphs (3) and (6) shall be construed accordingly.

#### **Procedure for declaration that trade mark would have been liable to be revoked or declared invalid**

**16.**—(1) In the case of proceedings on an application under paragraph 15 before the registrar, the rules relating to applications for and proceedings relating to the revocation or invalidation of a trade mark apply, with necessary modifications.

(2) In the case of proceedings on an application under paragraph 15 before the court, section 74 applies to the proceedings as it applies to proceedings involving an application of the type referred to in section 74(1)(a) to (c).

#### **Assignment of an existing IR(EU) not registered on exit day**

**17.**—(1) This paragraph applies where before exit day an existing IR(EU) (or any right in it) is the subject of an assignment (a “relevant assignment”) which immediately before exit day is not recorded in the International Register.

(2) Section 25 applies in relation to a relevant assignment as if it were a registrable transaction affecting a comparable trade mark (IR), subject to the modification set out below.

(3) An application under section 25(1) may only be made by—

- (a) a person claiming to be entitled to an interest in or under a comparable trade mark (IR) by virtue of a relevant assignment of the corresponding (IR); or
- (b) the proprietor of the comparable trade mark (IR).

#### **Effect of a licence of an existing IR(EU)**

**18.**—(1) This paragraph applies where immediately before exit day an existing IR(EU) is the subject of a licence (a “relevant licence”) which—

- (a) authorises the doing of acts in the United Kingdom which would otherwise infringe the international trade mark; and
- (b) does not expire on exit day.

(2) Subject to any agreement to the contrary between the licensee and the licensor, a relevant licence continues to authorise the doing of acts in the United Kingdom which would otherwise infringe the comparable trade mark (IR) which derives from the existing IR(EU).

- (3) Sub-paragraph (2) is subject to—
- (a) the terms on which the relevant licence was granted; and
  - (b) such modifications to the terms referred to in paragraph (a) as are necessary for their application in the United Kingdom.
- (4) Section 25 applies in relation to a relevant licence as if it were a registrable transaction affecting a comparable trade mark (IR), subject to the modifications set out below.
- (5) An application under section 25(1) may only be made by—
- (a) a person claiming to be a licensee by virtue of the relevant licence; or
  - (b) the proprietor of the comparable trade mark (IR).
- (6) Where immediately before exit day there is an entry in the International Register relating to a relevant licence—
- (a) section 25(3) and (4) does not apply until after the expiry of the relevant period; and
  - (b) section 25(4)(a) applies after the expiry of the relevant period but as if the reference to six months beginning with the date of the transaction were a reference to eighteen months beginning with exit day.
- (7) In sub-paragraph (6)(a), the “relevant period” means the period of twelve months beginning with the day after that on which exit day falls.

#### **Effect of a security interest in an existing IR(EU)**

**19.**—(1) This paragraph applies where immediately before exit day an existing IR(EU) (or any right in or under it) is the subject of a security interest (a “relevant security interest”) which—

- (a) restricts the proprietor’s right to dispose in the European Union of the existing IR(EU); and
  - (b) does not terminate on exit day.
- (2) References to the existing IR(EU), or the international registration to which the existing IR(EU) is subject, in any document which grants or refers to the relevant security interest are to be read as including references to the comparable trade mark (IR) which derives from the existing IR(EU).
- (3) Section 25 applies in relation to a relevant security interest as if it were a registrable transaction affecting a comparable trade mark (IR), subject to the modifications set out below.
- (4) An application under section 25(1) may only be made by—
- (a) a person claiming to be entitled to an interest in or under a comparable trade mark (IR) by virtue of the relevant security interest; or
  - (b) the proprietor of the comparable trade mark (IR).
- (5) Where immediately before exit day there is an entry in the International Register relating to a relevant security interest—
- (a) section 25(3) and (4) do not apply until after the expiry of the relevant period; and
  - (b) section 25(4)(a) applies after the expiry of the relevant period but as if the reference to six months beginning with the date of the transaction were a reference to eighteen months beginning with exit day.
- (6) In sub-paragraph (5)(a), the “relevant period” means the period of twelve months beginning with the day after that on which exit day falls.

### **Continuity of rights in relation to a comparable trade mark (IR)**

**20.**—(1) References to an existing IR(EU), or the international registration to which an existing IR(EU) is subject, in any document made before exit day shall, unless there is evidence that the document was not intended to have effect in the United Kingdom, be read on and after exit day as including references to the comparable trade mark (IR) or the registration of the comparable trade mark (IR) which derives from the existing IR(EU).

(2) Subject to any agreement to the contrary, a consent granted before exit day by the proprietor of an existing IR(EU) to the doing on or after exit day of an act in the United Kingdom which would otherwise infringe the comparable trade mark (IR) which derives from the existing IR(EU) is to be treated for the purposes of section 9 as a consent to the doing of that act.

### **Existing IR(EU): pending proceedings**

**21.**—(1) This paragraph applies where on exit day an existing IR(EU) is the subject of proceedings which are pending (“pending proceedings”) before a court in the United Kingdom designated for the purposes of Article 123 of the European Union Trade Mark Regulation (“EU trade mark court”).

(2) Subject to sub-paragraphs (3) and (4), the provisions contained or referred to in Chapter 10 of the European Union Trade Mark Regulation (with the exception of Articles 128(2), (4), (6) and (7) and 132) continue to apply to the pending proceedings as if the United Kingdom were still a Member State with effect from exit day.

(3) Where the pending proceedings involve a claim for infringement of an existing IR(EU), without prejudice to any other relief by way of damages, accounts or otherwise available to the proprietor of the existing IR(EU), the EU trade mark court may grant an injunction to prohibit unauthorised use of the comparable trade mark (IR) which derives from the existing IR(EU).

(4) Where the pending proceedings involve a counterclaim for the revocation of, or a declaration of invalidity in relation to, an existing IR(EU), the EU trade mark court may revoke the registration of the comparable trade mark (IR) which derives from the existing IR(EU) or declare the registration of the comparable trade mark (IR) which derives from the existing IR(EU) to be invalid.

(5) Where the grounds for revocation or invalidity exist in respect of only some of the goods or services for which the existing IR(EU) is registered, the revocation or declaration of invalidity in respect of the registration of the comparable trade mark (IR) which derives from the existing IR(EU) relates to those goods or services only.

(6) Where (by virtue of sub-paragraph (4)) the registration of a comparable trade mark (IR) is revoked to any extent, the rights of the proprietor are deemed to have ceased to that extent as from—

- (a) the date of the counterclaim for revocation, or
- (b) if the court is satisfied that the grounds for revocation existed at an earlier date, that date.

(7) Where (by virtue of sub-paragraph (4)) the registration of a comparable trade mark (IR) is declared invalid to any extent, the registration is to that extent to be deemed never to have been made, provided that this does not affect transactions past and closed.

(8) For the purposes of this paragraph proceedings are treated as pending on exit day if they were instituted but not finally determined before exit day.

### **Existing IR(EU): effect of injunction**

**22.**—(1) This paragraph applies where immediately before exit day an injunction is in force prohibiting the performance of acts in the United Kingdom which infringe or would infringe an existing IR(EU) (a “relevant injunction”).

(2) Subject to any order of the court to the contrary, a relevant injunction will have effect and be enforceable to prohibit the performance of acts which infringe or would infringe a comparable trade mark (IR) to the same extent as in relation to the existing IR(EU) from which the comparable trade mark (IR) derives as if it were an injunction granted by the court.

## PART 2

Treatment of international trade marks protected in the European Union which expire during the period of six months ending on exit day

### **Registration of certain expired international trade marks**

**23.**—(1) This Part applies to an international trade mark which, immediately before the transitional period, was protected in the European Union in accordance with Article 189(2) of the European Union Trade Mark Regulation but which, as a result of the expiry of the registration of the international trade mark during the transitional period, does not fall within paragraph 1(1) (an “expired IR(EU)”).

(2) Where the international registration to which an international trade mark is subject has been sub-divided as referred to in paragraph 1(2), there is to be deemed for the purposes of sub-paragraph (1) to be a separate expired trade mark in respect of the goods or services covered by each sub-division of the registration.

(3) An expired IR(EU) is to be treated as if it were an existing IR(EU).

(4) The provisions of Part 1 of this Schedule apply to an expired IR(EU) as they apply to an existing IR(EU) subject to the provisions of this Part of the Schedule.

(5) Notwithstanding the entry in the register (under paragraph 3, as applied by sub-paragraph (4)) of a comparable trade mark (IR) which derives from an expired IR(EU), the registration of the comparable trade mark (IR) is expired until the proprietor gives notice to the registrar in accordance with paragraph 24(1)(b) (or the comparable trade mark (IR) is removed from the register in accordance with paragraph 24(2)).

(6) In this paragraph, “transitional period” means the period of six months ending with exit day.

### **Renewal of an expired IR(EU)**

**24.**—(1) Where within the period beginning with exit day and ending with the end of the relevant period—

- (a) the international registration to which an expired IR(EU) is subject is renewed in accordance with Article 7; and
- (b) the proprietor of the expired IR(EU) notifies the registrar of such renewal (a “renewal notice”),

paragraphs 25 and 26 apply to the renewal of the registration of the comparable trade mark (IR) which derives from the expired IR(EU).

(2) If within the period referred to in sub-paragraph (1) the proprietor fails to notify the registrar in accordance with sub-paragraph (1)(b)—

- (a) the registrar must remove from the register the comparable trade mark (IR) which derives from the expired IR(EU); and
- (b) the comparable trade mark (IR) ceases with effect from exit day to be treated as if it had been registered under this Act.

(3) In sub-paragraph (1), the “relevant period” means the period of nine months beginning with the day after that on which exit day falls.

### **Renewal of an expired IR(EU): territorial extension under Article 3ter(1)**

**25.**—(1) Where the protection in the European Union of an expired IR(EU) resulted from a request for territorial extension under Article 3ter(1), the registrar must, as soon as reasonably practicable following receipt of the renewal notice, renew the registration of the comparable trade mark (IR) which derives from the expired IR(EU).

(2) A comparable trade mark (IR) which is renewed under sub-paragraph (1) shall be renewed for a period of ten years from the expiry of the international registration to which the expired IR(EU) is subject.

(3) Section 43(6) applies to the registration of a comparable trade mark (IR) which is renewed in accordance with this paragraph.

### **Renewal of an expired IR(EU): territorial extension under Article 3ter(2)**

**26.**—(1) This paragraph applies where the protection in the European Union of an expired IR(EU) resulted from a request for territorial extension under Article 3ter(2).

(2) The relevant date for the purposes of determining the date of renewal of the registration of the comparable trade mark (IR) which derives from the expired IR(EU) (the “relevant renewal date”) shall be—

- (a) the date of expiry of the period of ten years from the date on which the request for territorial extension was recorded in the International Register; or
- (b) where the international registration to which the expired IR(EU) is subject has been renewed since the date referred to in paragraph (a), the anniversary of that date, computed by reference to periods of ten years, following the last renewal of the registration prior to the date of the renewal notice (the “notice date”).

(3) Where the relevant renewal date of a comparable trade mark (IR) falls prior to the notice date, the registrar must, as soon as reasonably practicable following receipt of a renewal notice, renew the registration of the comparable trade mark (IR) which derives from the expired IR(EU).

(4) Where the relevant renewal date of a comparable trade mark (IR) falls before the expiry of the period of six months beginning with the notice date, sub-paragraphs (5) and (6) apply (and accordingly section 43(1) to (3A) does not apply).

(5) The registration of the comparable trade mark (IR) may be renewed at the request of the proprietor before the relevant renewal date.

(6) Where the registration of the comparable trade mark (IR) is not renewed in accordance with sub-paragraph (5)—

- (a) on, or as soon as reasonably practicable after, the relevant renewal date, the registrar must notify the proprietor that the registration of the comparable trade mark (IR) has expired and of the manner in which registration may be renewed; and
- (b) a request for renewal must be made within a period of six months beginning with the date of the notice.

(7) If a request for renewal is made in respect of only some of the goods or services for which the comparable trade mark (IR) is registered, the registration is to be renewed for those goods or services only.

(8) A comparable trade mark (IR) which is renewed under sub-paragraph (3) or pursuant to a request for renewal in accordance with sub-paragraph (5) or (6) shall be renewed for a period of ten years from the relevant renewal date (and accordingly, section 43(4) does not apply).

(9) Where sub-paragraphs (5) and (6) apply to the renewal of the registration of a comparable trade mark (IR) and the registration is not renewed in accordance with those provisions, the registrar must remove the comparable trade mark (IR) from the register.

(10) Section 43(6) applies to the registration of a comparable trade mark (IR) which is renewed in accordance with this paragraph.

(11) Where a comparable trade mark (IR) is removed from the register pursuant to sub-paragraph (9), the rules relating to the restoration of the registration of a trade mark (referred to in section 43(5)) apply in relation to the restoration of the comparable trade mark (IR) to the register.

(12) Where the relevant renewal date of a comparable trade mark (IR) falls on or after the expiry of the period of six months beginning with the notice date, section 43 applies to the renewal of the registration of the comparable trade mark (IR) and references to the expiry of the registration are to be treated as references to the relevant renewal date of the comparable trade mark (IR).

## PART 3

### Applications for the extension of protection of international registrations to the European Union which are pending on exit day

#### Interpretation

27.—(1) In this Part—

- (a) references to an “existing ITM application” are to an international application which contains a request for extension of the protection resulting from an international registration to the European Union under Article 3*ter*(1) in respect of which the conditions in sub-paragraph (2) are satisfied;
- (b) references to an “existing request for EU extension” are to a request for extension to the European Union of the protection resulting from an international registration made subsequent to the international registration pursuant to Article 3*ter*(2) in respect of which the conditions in sub-paragraph (3) are satisfied;
- (c) references to an “international application” are to an application to the International Bureau under Article 2(2) for the registration of a trade mark in the International Register.

(2) The conditions referred to in sub-paragraph (1)(a) are—

- (a) the international application was filed before exit day with the Office of origin in accordance with Article 2(2); and
- (b) as at the time immediately before exit day, the request for extension of protection to the European Union mentioned in the international application has been neither granted nor refused by the European Union Intellectual Property Office.

(3) The conditions referred to in sub-paragraph (1)(b) are—

- (a) the request for extension of protection to the European Union was filed before exit day with the Office of origin or the International Bureau (as the case may be) in accordance with Rule 24(2); and
- (b) as at the time immediately before exit day, the request for extension of protection to the European Union has been neither granted nor refused by the European Union Intellectual Property Office under the European Union Trade Mark Regulation.

(4) In sub-paragraphs (2)(b) and (3)(b) —

- (a) the reference to the request for extension of protection to the European Union being “granted” means the European Union Intellectual Property Office having sent to the International Bureau a statement to the effect that protection is granted to the mark in the European Union in accordance with Rule 18*ter*; and
- (b) the reference to the request for extension of protection to the European Union being “refused” means the European Union Intellectual Property Office having

sent to the International Bureau a notification of refusal in accordance with Article 5(1) or (2) which refusal has not been subsequently withdrawn.

**Application for registration under this Act based upon an existing ITM application or an existing request for EU extension recorded in the International Register prior to exit day**

**28.**—(1) This paragraph applies where—

(a) either—

(i) an existing ITM application has been filed with the International Bureau in respect of a trade mark and the date accorded to the international registration of the trade mark pursuant to Article 3(4) is a date prior to exit day; or

(ii) an existing request for EU extension in respect of a trade mark has been filed with the International Bureau and the date on which it was recorded in the International Register pursuant to Article 3*ter*(2) is a date prior to exit day;

(b) the person who filed the existing ITM application or (as the case may be) the existing request for EU extension, or a successor in title of that person, applies for registration of the same trade mark under this Act for some or all of the same goods or services, and

(c) the application under this Act is made within a period beginning with exit day and ending with the end of the period referred to in sub-paragraph (4).

(2) Where this paragraph applies, the relevant date for the purposes of establishing which rights take precedence is the earliest of—

(a) the date accorded to the international trade mark the subject of the existing ITM application pursuant to Article 3(4) or, in the case of an existing request for EU extension, the date on which the request was recorded in the International Register pursuant to Article 3*ter*(2);

(b) the date of priority (if any) accorded pursuant to a right of priority claimed pursuant to Article 4 of the Paris Convention in respect of the existing ITM application or the existing request for EU extension (as the case may be).

(3) The registrability of the trade mark the subject of an application under this Act of the type mentioned in sub-paragraph (1)(b) and made within the period mentioned in sub-paragraph (1)(c) shall not be affected by any use of the mark in the United Kingdom which commenced in the period between the date referred to in sub-paragraph (2) and the date of the application under this Act.

(4) In sub-paragraph (1)(c), the period referred to is the period of nine months beginning with the day after that on which exit day falls.

(5) A right of priority claimed pursuant to Article 4 of the Paris Convention in respect of an existing request for EU extension is to be disregarded for the purposes of sub-paragraph (2)(b) unless the existing request for EU extension was recorded in the International Register within a period of six months beginning with the day after the priority date recorded in the International Register in respect of the international application for protection of the trade mark which is the same as the one in respect of which the existing request for EU extension was filed.

**Application for registration under this Act based upon an existing ITM application or an existing request for EU extension recorded in the International Register on or after exit day**

**29.**—(1) This paragraph applies where—

(a) either—

- (i) an existing ITM application has been filed with the International Bureau in respect of a trade mark and the date accorded to the international registration of the trade mark pursuant to Article 3(4) is a date on or after exit day; or
  - (ii) an existing request for EU extension in respect of a trade mark has been filed with the International Bureau and the date on which it was recorded in the International Register pursuant to Article 3ter(2) is a date on or after exit day;
  - (b) the person who filed the existing ITM application or (as the case may be) the existing request for EU extension, or a successor in title of that person, applies for registration of the same trade mark under this Act for some or all of the same goods or services; and
  - (c) the application under this Act is made within the period of nine months beginning with the date referred to in sub-paragraph (a)(i) or (ii) (as the case may be).
- (2) Where this paragraph applies, the relevant date for the purposes of establishing which rights take precedence is the earliest of—
- (a) the date accorded to the international trade mark the subject of the existing ITM application pursuant to Article 3(4) or, in the case of an existing request for EU extension, the date on which the request was recorded in the International Register pursuant to Article 3ter(2);
  - (b) the date of priority (if any) accorded pursuant to a right of priority claimed pursuant to Article 4 of the Paris Convention in respect of the existing ITM application or the existing request for EU extension (as the case may be).
- (3) The registrability of the trade mark the subject of an application under this Act of the type mentioned in sub-paragraph (1)(b) and made within the period mentioned in sub-paragraph (1)(c) shall not be affected by any use of the mark in the United Kingdom which commenced in the period between the date referred to in sub-paragraph (2) and the date of the application under this Act.
- (4) A right of priority claimed pursuant to Article 4 of the Paris Convention in respect of an existing request for EU extension is to be disregarded for the purposes of sub-paragraph (2)(b) unless the existing request for EU extension was recorded in the International Register within a period of six months beginning with the day after the priority date recorded in the International Register in respect of the international application for protection of the trade mark which is the same as the one in respect of which the existing request for EU extension was filed.

**Right to claim seniority where seniority has been claimed by an existing ITM application or an existing request for EU extension**

**30.**—(1) Where an existing ITM application or an existing request for EU extension claims seniority of a trade mark which trade mark (“the senior mark”) is a registered trade mark or a protected international trade mark (UK), the applicant may claim seniority of the senior mark in an application for registration of a trade mark (a “relevant mark”) pursuant to this Part.

(2) The effect of a seniority claim made pursuant to sub-paragraph (1) is that where following the registration of the relevant mark the proprietor of that mark surrenders the senior mark or allows it to lapse (wholly or partially), subject to paragraph 31, the proprietor of the relevant mark is deemed to continue to have the same rights as the proprietor would have had if the senior mark had continued to be registered in respect of all the goods or services for which it was registered prior to the surrender or lapse.

(3) Provision may be made by rules as to the manner of claiming seniority pursuant to this paragraph.

(4) In sub-paragraph (1), an application for registration of a trade mark “pursuant to this Part” means an application that is of the type mentioned in paragraph 28(1)(b) or 29(1)(b) and that is made within the period mentioned in paragraph 28(1)(c) or 29(1)(c) (as the case may be).

**Determination of invalidity and liability to revocation in relation to claim of seniority under paragraph 30**

**31.**—(1) Where a relevant mark has claimed seniority of a registered trade mark which has been—

- (a) removed from the register under section 43; or
- (b) surrendered under section 45,

any person may apply to the registrar or to the court for the declaration set out in subparagraph (2).

(2) The declaration is that, if the trade mark had not been so removed or surrendered, the registration of the trade mark would have been liable to be revoked under section 46 with effect from a date specified in the declaration or declared invalid under section 47.

(3) Where the declaration is that had the trade mark not been so removed or surrendered, the registration of it would have been liable to be—

- (a) revoked under section 46 with effect from a date prior to—
  - (i) where the application for registration of the relevant mark was based on an existing ITM application and there has been no claim of priority, the date of registration accorded pursuant to Article 3(4) to the international trade mark the subject of the existing ITM application;
  - (ii) where the application for registration of the relevant mark was based on an existing request for EU extension and there has been no claim of priority, the date on which the request was recorded in the International Register pursuant to Article 3ter(2);
  - (iii) where the application for registration of the relevant mark was based on an existing ITM application or an existing request for EU extension and there has been a claim of priority, the priority date accorded pursuant to a right of priority claimed pursuant to Article 4 of the Paris Convention; or
- (b) declared invalid under section 47,

the seniority claimed for the relevant mark is to be treated as if it never had effect.

(4) Where a relevant mark has claimed seniority of a protected international trade mark (UK) which has been—

- (a) removed from the International Register; or
- (b) surrendered under the Madrid Protocol,

any person may apply to the registrar or to the court for the declaration set out in subparagraph (5).

(5) The declaration is that, if the trade mark had not been so removed or surrendered, the protection of the trade mark in the United Kingdom would have been liable to be revoked under section 46 with effect from a date specified in the declaration or declared invalid under section 47.

(6) Where the declaration is that had the trade mark not been so removed or surrendered, the registration of it would have been liable to be—

- (a) revoked under section 46 with effect from a date prior to—
  - (i) where the application for registration of the relevant mark was based on an existing ITM application and there has been no claim of priority, the date of registration accorded pursuant to Article 3(4) to the international trade mark the subject of the existing ITM application;
  - (ii) where the application for registration of the relevant mark was based on an existing request for EU extension and there has been no claim of priority, the date on which the request was recorded in the International Register pursuant to Article 3ter(2);

- (iii) where the application for registration of the relevant mark was based on an existing ITM application or an existing request for EU extension and there has been a claim of priority, the priority date accorded pursuant to a right of priority claimed pursuant to Article 4 of the Paris Convention; or

- (b) declared invalid under section 47,

the seniority claimed for the relevant mark is to be treated as if it never had effect.

(7) Where the application for registration of the relevant mark was based on an existing request for EU extension a right of priority claimed pursuant to Article 35 of the European Union Trade Mark Regulation in respect of the request for EU extension is to be disregarded for the purposes of sub-paragraphs (3)(a)(iii) and (6)(a)(iii) unless the request for territorial extension was recorded in the International Register within a period of six months beginning with the day after the priority date recorded in the International Register in respect of the international application for protection of the trade mark which is the same as the one in respect of which the request for EU extension was filed.

(8) References in sub-paragraphs (5) and (6) to sections 46 and 47 are to those sections as they apply to a protected international trade mark (UK) under an order made pursuant to section 54.

(9) Where a trade mark has been surrendered or allowed to lapse in respect of only some of the goods or services for which it is registered, the declaration in sub-paragraphs (2) and (5) is that if the goods or services had not been removed from the registration, the registration of the trade mark would have been liable to be revoked under section 46 with effect from a date specified in the declaration or declared invalid under section 47 and sub-paragraphs (3) and (6) shall be construed accordingly.

(10) The provisions of paragraph 16 apply in relation to an application under this paragraph as they apply to an application under paragraph 15.

## PART 4

### Transformation applications which are pending on exit day

#### **Transformation applications**

**32.**—(1) In this Part, references to a “transformation application” are to an application for transformation of an international registration which has been cancelled (a “cancelled international registration”) into an application for registration of a European Union trade mark filed under Article 204 of the European Union Trade Mark Regulation in respect of which the conditions in sub-paragraph (2) are satisfied.

(2) The conditions referred to in sub-paragraph (1) are—

- (a) the transformation application was filed before exit day with the European Union Intellectual Property Office;
- (b) as at the time immediately before exit day the transformation application has neither been granted nor refused by the European Union Intellectual Property Office under the European Union Trade Mark Regulation; and
- (c) the international registration was not cancelled at the request of the Patent Office as Office of origin for the international registration of the trade mark.

(3) In sub-paragraph (2)(b)—

- (a) the reference to the transformation application being “granted” means a European Union trade mark being registered under the European Union Trade Mark Regulation pursuant to the transformation application; and
- (b) the reference to the transformation application being “refused” means the transformation application being subject to the provisions in Article 204(5) of the European Union Trade Mark Regulation.

### **Application for registration based upon a cancelled international registration**

**33.**—(1) This paragraph applies where—

- (a) a person who has filed a transformation application in respect of a cancelled international registration, or a successor in title of that person, applies for registration under this Act of a trade mark which is the same as the trade mark which was the subject of the cancelled international registration and in respect of some or all of the same goods or services included in the international registration;
- (b) the application for registration under this Act is made within the period beginning with exit day and ending with the end of the relevant period; and
- (c) on or before the date of the transformation application on which the application for registration under this Act is based the trade mark that was the subject of the cancelled international registration—
  - (i) was protected in the European Union in accordance with Article 189(2) of the European Union Trade Mark Regulation; or
  - (ii) was the subject of an existing ITM application or an existing request for EU extension which, as at that date, had neither been granted nor refused by the European Union Intellectual Property Office (the references to “granted” and “refused” having the same meaning as given by paragraph 27(4)).

(2) Where this paragraph applies by virtue of sub-paragraph (1)(c)(i), the relevant date for the purposes of establishing which rights take precedence is the earliest of—

- (a) where—
  - (i) the protection in the European Union of the trade mark that was the subject of the cancelled international registration resulted from a request for territorial extension under Article 3*ter*(1), the date of registration accorded to the international registration pursuant to Article 3(4); or
  - (ii) the protection in the European Union of the trade mark that was the subject of the cancelled international registration resulted from a request for territorial extension under Article 3*ter*(2), the date on which the request was recorded in the International Register; and
- (b) the date of priority (if any) accorded pursuant to a right of priority claimed pursuant to Article 4 of the Paris Convention in respect of the request referred to in paragraph (a)(i) or (ii).

(3) Where this paragraph applies by virtue of sub-paragraph (1)(c)(ii), the relevant date for the purposes of establishing which rights take precedence is the earliest of—

- (a) the date accorded to the trade mark that was the subject of the existing ITM application pursuant to Article 3(4) or, in the case of an existing request for EU extension, the date on which the request was recorded in the International Register pursuant to Article 3*ter*(2); and
- (b) the date of priority (if any) accorded pursuant to a right of priority claimed pursuant to Article 4 of the Paris Convention in respect of the request referred to in paragraph (a).

(4) A right of priority claimed pursuant to Article 4 of the Paris Convention in respect of a request for territorial extension to the European Union made under Article 3*ter*(2) is to be disregarded for the purposes of sub-paragraphs (2)(b) and (3)(b) unless the request for extension was recorded in the International Register within a period of six months beginning with the day after the priority date recorded in the International Register in respect of the international application for protection of the trade mark which is the same as the one in respect of which the request for extension was filed.

(5) The registrability of the trade mark the subject of an application under this Act of the type mentioned in sub-paragraph (1)(a) and made within the period mentioned in sub-paragraph (1)(b) shall not be affected by any use of the mark in the United Kingdom which commenced in the period between the date referred to in sub-paragraph (2) or (3) (as the

case may be) and the date of the application for registration of the trade mark under this Act.

(6) Paragraphs 30 and 31 apply in relation to an application for a trade mark under this Act of the type mentioned in sub-paragraph (1)(a) and made within the period mentioned in sub-paragraph (1)(b), as they apply in relation to an application for registration of a trade mark pursuant to Part 3, but as if—

- (a) the references to an existing ITM application or an existing request for EU extension and an existing ITM application and an existing request for EU extension had the same meaning as they have in this paragraph; and
- (b) the references to an existing ITM application included references to a “protected EU designation”.

(7) In this paragraph—

- (a) an “existing ITM application” means an international application which contains a request for extension of the protection resulting from an international registration to the European Union under Article 3ter(1) which has been filed with the Office of origin in accordance with Article 2(2);
- (b) an “existing request for EU extension” means a request for extension to the European Union of the protection resulting from an international registration made subsequent to the international registration pursuant to Article 3ter(2) which has been filed with the Office of origin or the International Bureau (as the case may be) in accordance with Rule 24(2);
- (c) the “relevant period” means the period of nine months beginning with the day after that on which exit day falls;
- (d) a “protected EU designation” means an international registration which prior to its cancellation was protected in the European Union in accordance with Article 189(2) of the European Union Trade Mark Regulation.

## PART 5

### Interpretation

#### Interpretation

**34.**—(1) In this Schedule—

“comparable trade mark (IR)” has the meaning given by paragraph 1(4);

“the Common Regulations” means the Common Regulations under the Madrid Agreement concerning the international registration of marks and the Madrid Protocol in force on 1<sup>st</sup> November 2017(a);

“corresponding (IR)” has the meaning given by paragraph 3(4);

“existing IR(EU)” has the meaning given by paragraph 1(1);

“expired IR(EU)” has the meaning given by paragraph 23(1);

“international application” has the meaning given by paragraph 27(1)(c);

“the International Register” has the meaning given by paragraph 1(11)(a);

“international registration” has the meaning given by paragraph 1(11)(b);

“international trade mark” has the meaning given by paragraph 1(11)(c);

“Office of origin” has the meaning given by Article 2(2);

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(a) Available from the World Intellectual Property Organization at [www.wipo.int](http://www.wipo.int).

“the previous EUTM Regulations” means Council Regulation (EC) No 207/2009 of 26th February 2009 on the European Union trade mark<sup>(a)</sup> and Council Regulation (EC) No 40/94 of 20<sup>th</sup> December 1993 on the Community trade mark<sup>(b)</sup>;

“protected international trade mark (UK)” has the same meaning as in the Trade Marks (International Registration) Order 2008<sup>(c)</sup>;

(2) References in this Schedule to—

- (a) an “Article” are to an Article of the Madrid Protocol;
- (b) an Article of the European Union Trade mark Regulation include references to any equivalent Article contained in the previous EUTM Regulations;
- (c) the European Union Trade Mark Regulation include references to the previous EUTM Regulations;
- (d) an international trade mark include references to an international trade mark which is dealt with for the purposes of the European Union Trade Mark Regulation as an EU collective mark or an EU certification mark;
- (e) a “Rule” are to a Rule of the Common Regulations.

(3) In this Schedule, references to a request for territorial extension, in relation to an existing IR(EU) which is the subject of a separate international registration within the meaning of paragraph 1(3), are to the request made before the separate international registration was created.”.

## SCHEDULE 5

Regulation 7

### Fees payable in respect of re-registered designs, re-registered international designs and comparable trade marks (IR)

#### PART 1

##### Fees payable in respect of a re-registered design or a re-registered international design

**1.**—(1) The extension of the duration of the right in a re-registered design or a re-registered international design under section 8 of the Act is subject to the payment of a renewal fee and payment of the additional fee which applies in the circumstances referred to in section 8(4) of the Act.

(2) But no additional fee is payable if the application for extension under section 8(4) of the Act relates to a re-registered design, or a re-registered international design, the right in which expired within the period of six months beginning with exit day and ending with the end of the relevant period.

(3) In sub-paragraph (2), “the relevant period” means the period of six months ending with the day after that on which exit day falls.

**2.** The restoration of the right in a re-registered design or a re-registered international design under section 8A of the Act is subject to the payment of a renewal fee and payment of the additional fee which applies in the circumstances referred to in section 8(4) of the Act.

**3.** A request for a certified copy of an entry in the register or a certified extract from the register relating to a re-registered design or a re-registered international design made under section 17(5) of the Act is subject to payment of a fee.

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(a) OJ No. L 78, 24.3.2009, p.1.

(b) OJ No. L 11, 14.1.1994, p.1.

(c) S.I. 2008/2206.

**4.** The registrar may by rules provide that any person who applies for an uncertified copy or extract from the register in respect of a re-registered design or re-registered international design shall be entitled to such a copy or extract on payment of a fee prescribed in relation to uncertified copies and extracts.

**5.** A request made to correct any error in the representation of a re-registered design or re-registered international design, or any error in the register in respect of a re-registered design or re-registered international design, made under section 21(2) of the Act is subject to payment of a fee.

**6.** A request for information under section 23 of the Act relating to a design which is a re-registered design or re-registered international design is subject to payment of a fee.

**7.** The registrar may by regulations make provision about fees in relation to the making of requests to the registrar under section 28A for an opinion on specified matters relating to re-registered designs or re-registered international designs.

**8.** The Registered Designs (Fees) Rules 2016(a) apply to re-registered designs and re-registered international designs as they apply to other registered designs.

## PART 2

### Fees payable in respect of a comparable trade mark (IR)

**9.** The renewal of the registration of a comparable trade mark (IR) under section 43 of the 1994 Act is subject to the payment of a renewal fee and, in the circumstances referred to in section 43(3) of the 1994 Act, payment of an additional renewal fee.

**10.** The renewal of the registration of a comparable trade mark (IR) under paragraph 5 of Schedule 2B to the 1994 Act is subject to the payment of a renewal fee as if the renewal had been requested under section 43(1) of the 1994 Act before the expiry of the registration.

**11.** The renewal of a comparable trade mark (IR) under paragraph 26(5) or (6) of Schedule 2B to the 1994 Act is subject to the payment of a renewal fee as if the renewal had been requested under section 43(1) of the 1994 Act before the expiry of the registration.

**12.** If a renewal fee is paid in respect of only some of the goods or services for which a comparable trade mark (IR) is registered, the registration is to be renewed for those goods or services only.

**13.** A request for information or inspection of documents relating to a comparable trade mark (IR) made under section 67 of the 1994 Act is subject to payment of the appropriate fee (if any).

**14.** The Trade Marks (Fees) Rules 2008(b) apply to comparable trade marks (IR) as they apply to other registered trade marks.

**15.** The Commissioners for Her Majesty's Revenue and Customs may by regulations made by statutory instrument require the proprietor or a licensee of a comparable trade mark (IR) who is giving notice under section 89 of the 1994 Act to pay such fees in respect of the notice as may be specified by the regulations.

**16.** Regulations under paragraph 15 may make different provision as respects different classes of case to which they apply and may include such incidental and supplementary provisions as the Commissioners consider expedient.

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(a) S.I. 2016/889

(b) S.I. 2008/1958 as amended by S.I. 2009/2089, rules 15 to 19, S.I. 2010/33, rules 13 to 14, S.I. 2012/1003, rule 3(2), S.I. 2013/2236, rules 2(1) to (c).

17. A statutory instrument containing regulations under paragraph 15 is subject to annulment in pursuance of a resolution of either House of Parliament.

18. The Trade Marks (Customs) Regulations 1994, to the extent that they make provision which could be made under paragraph 15, are to be treated as if they had been made under paragraph 14 as well as under section 90 of the 1994 Act.

## SCHEDULE 6

Regulation 8

### Amendments to the Registered Designs Rules

1. The Registered Designs Rules are amended as follows.

2. After rule 2A (directions of the registrar), insert—

#### **“Re-registered designs**

**2B.** Except where provided to the contrary, these Rules apply to a re-registered design and a re-registered international design as they apply to other registered designs.”

3. In rule 13(2)—

(a) at the end of (2) insert—

“except where the registered design is a re-registered design or a re-registered international design where the duration of the right in the design ends within the period of six months beginning with exit day (as defined in section 20(1) of the European Union (Withdrawal) Act 2018) and ending with the end of the period of six months beginning with the day after that on which exit day falls (a “relevant re-registered design”)”.

(b) after (2) insert—

“(2A) The period prescribed for the purposes of section 8A(1) in respect of a relevant re-registered design or a re-registered international design shall be the period of 12 months beginning immediately after the date on which the registrar gave notice under section 8(3).”

4. Omit rule 23.

5. In rule 26 (certificate of registration), after paragraph (3) insert “(4) This rule shall not apply to re-registered designs or re-registered international designs.”

6. In rule 27 (registration of interests), in paragraph (1)—

(a) at the end of sub-paragraph (d), for “.”, substitute “;”;

(b) after sub-paragraph (d) insert—

“(e) where the design to be registered is a re-registered design (within the meaning of “re-registered design” in paragraph 1(2) of Schedule 1A) an indication that the re-registered design was on exit day the subject of a registration at the European Union Intellectual Property Office, including the number of the registration of the registered Community design from which the re-registered design derives.”

7. In rule 33 (copies of representations and specimens), after paragraph (2) insert “(3) This rule shall not apply to re-registered designs or re-registered international designs.”

8. In rule 42 (address for service), in paragraph (4), for “another” substitute “an”.

## Amendments to the Trade Marks Rules

1. The Trade Marks Rules are amended as follows.
2. In rule 2, after paragraph (2) insert—

“(2A) Terms defined in Part 5 of Schedules 2A and 2B have the same meaning in these Rules.”.
3. Before rule 3 insert—

**“2B Comparable trade mark (IR)**

These Rules apply to a comparable trade mark (IR) as they apply to other registered trade marks.”

4. After rule 4 insert—

**“4A Prescribed comparable trade mark (IR) fees**

In relation to a comparable trade mark (IR), “prescribed” in rule 4(1) means prescribed by virtue of regulations under Schedule 4 to the European Union (Withdrawal) Act 2018.”.

5. Before rule 6 insert—

**“5B Application for registration based upon an existing ITM application, existing request for EU extension or transformation application; Schedule 2B paragraph 28, 29 or 33**

(1) Where an application for registration is made in accordance with paragraph 28, 29 or 33 of Schedule 2B, the application for registration under rule 5 must specify—

- (a) the number of the international registration to which the application relates;
- (b) the date referred to in paragraph 28(2)(a), 29(2)(a) or 33(2)(a) or (3)(a) of Schedule 2B (as the case may be) in respect of that application; and
- (c) the date of priority (if any) accorded pursuant to a right of priority claimed in respect of the existing ITM application the existing request for EU extension or the cancelled international registration the subject of a transformation application.

(2) Where—

- (a) a right of priority has been claimed (“a priority claim”) in respect of the existing ITM application, an existing request for EU extension or the cancelled international registration the subject of a transformation application; or
- (b) the seniority of a registered trade mark or a protected international trade mark (UK) has been claimed (“a seniority claim”) pursuant to paragraph 30 or 33 of Schedule 2B,

the application for registration under rule 5 must, in addition, specify the information provided in paragraph (3).

(3) The information is—

- (a) in relation to a priority claim, the information specified in rule 6(1)(a) to (c); and
- (b) in relation to a seniority claim, the number of the registered trade mark or protected international trade mark (UK) from which the trade mark the subject of the application claims seniority and the seniority date.

(4) The registrar may, in any particular case, by notice require the applicant to file, within such period of not less than one month as the notice may specify, such documentary

evidence as the registrar may require certifying, or verifying to the satisfaction of the registrar—

- (a) the date referred to in paragraph (1)(b) in respect of the existing ITM application, existing request for EU extension or transformation application, the representation of the mark and the goods or services covered by that application; and
- (b) in relation to a priority claim, the date of filing of the overseas application, the country or registering or competent authority, the representation of the mark and the goods or services covered by the overseas application.”

6. In rule 14, after paragraph (3) insert—

“(3A) References in paragraph (2) to the proprietor of a trade mark also include a person who has applied for registration of a trade mark which, if registered, would be an earlier trade mark by virtue of section 6(1)(ab).”.

7. Before rule 30 insert—

**“29B Filing of regulations for International collective and certification marks; Schedule 2B, paragraph 4**

Regulations governing the use of a comparable trade mark (IR) which is a collective mark or a certification mark and any translation required to be filed under paragraph 4 of Schedule 2B must be filed within a period of three months following the date of notice from the registrar.”

8.—(1) Rule 47 is amended as follows.

(2) After paragraph (a) insert—

“(aa) in the case of a comparable trade mark (IR), the date of registration as determined in accordance with paragraph 1 of Schedule 2B”.

(3) After paragraph (b) insert—

“(bb) in the case of a comparable trade mark (IR), the date of completion of the registration procedure which is the date of publication by the European Union Intellectual Property Office of the matters referred to in Article 190(2) of the European Union Trade Mark Regulation in respect of the existing IR(EU) from which the comparable trade mark (IR) derives”.

(4) Before paragraph (d) insert—

“(cc) in the case of a comparable trade mark (IR)—

- (i) the priority date (if any) accorded pursuant to a claim of priority filed in respect of the corresponding (IR) pursuant to Article 4 of the Paris Convention; and
  - (ii) the number of the registered trade mark or international trade mark (UK) from which the corresponding (IR) claimed seniority (if any) and the seniority date;
- (cd) where the mark is registered pursuant to an application referred to in paragraph 28, 29 or 33 of Schedule 2B—
- (i) the priority date (if any) accorded pursuant to a claim to a right to priority made under paragraph 28(2)(b) (taking account of paragraph 28(5)), 29(2)(b) (taking account of paragraph 29(4)) or 33(2)(b) or (3)(b) (taking account of paragraph 33(4)) of Schedule 2B; and
  - (ii) the number of the registered trade mark or international trade mark (UK) from which the application claims seniority (if any) and the seniority date;”.

(5) After paragraph (n) insert—

“(o) in the case of a comparable trade mark (IR) an indication that it is derived from an existing IR(EU), including the number of the international registration to which the existing IR(EU) is subject.”.

## Other amendments to legislation

## PART 1

## Further amendments to the 1949 Act

1. The 1949 Act is further amended as follows.
2. In section 1B(a) (requirement of novelty and individual character), in subsection (6)(a), for “the European Economic Area”, substitute “the geographical area comprising the United Kingdom and the European Economic Area”.
3. In section 11ZA(b) (grounds for invalidity of registration), in subsection (1A)(b) omit subparagraphs (i) and (ii) and insert “by virtue of registration under this Act or an application for such registration.”
4. In section 11ZB(c) (applications for declaration of invalidity), in subsection (4)—
  - (a) omit “or the Community Design Regulation”;
  - (b) omit “; the holder of the registered Community design”.
5. In section 20(d) (rectification of register), in subsection (1B)—
  - (a) omit “or the Community Design Regulation”;
  - (b) omit “; the holder of the registered Community design”.
6. In section 24D(e) (order as to disposal of infringing articles etc), in subsection (5)—
  - (a) in paragraph (b) at the end of the paragraph (after the semi-colon in that paragraph) insert “or”;
  - (b) at the end of paragraph (c) omit “or”;
  - (c) omit paragraph (d).
7. In section 24G(f) (meaning of “infringing article”), omit subsection (5).
8. After section 25(g) (certificate of contested validity of registration), insert—

**“25A Privilege for communications with those on the special list of professional designs representatives**

(1) This section applies to communications as to any matter relating to the protection of a design as a registered design.

(2) Any such communication—

- (a) between a person and a professional designs representative; or

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- (a) Section 1B was inserted by S.I. 2001/3949, regulation 2.
  - (b) Section 11ZA was inserted by S.I. 2001/3949, regulation 7 and amended by S.I. 2006/1974, article 7(2), S.I. 2007/3378, regulation 2.
  - (c) Section 11ZB was inserted by S.I. 2001/3949, regulation 7 and amended by S.I. 2003/550, regulation 2(3)(a) and (b), S.I. 2006/1974, article 8(2),(3),(4) and (5).
  - (d) Section 20 was amended by the Copyright, Designs and Patents Act 1988 (c.48), section 272, Schedule 3, paragraph 11, S.I. 2001/3949, regulation 8(2),(3),(4), S.I. 2003/550, regulation 2(4)(a) and (b) and S.I. 2006/1974, article 10(2) and (3).
  - (e) Section 24D was inserted by S.I. 2006/1028, Schedule 1, paragraph 3.
  - (f) Section 24G was inserted by S.I. 2006/1028, Schedule 1, paragraph 3 and amended by S.I. 2011/1043, article 6(1)(f).
  - (g) Section 25 was amended by the Copyright, Designs and Patents Act 1988 (c.48), section 272, Schedule 3, paragraph 14, S.I. 2001/3949, Schedule 1, paragraph 8(2) and (3).

- (b) for the purposes of obtaining, or in response to a request for, information which a person is seeking for the purpose of instructing a professional designs representative,

is privileged from, or in Scotland protected against, disclosure in legal proceedings in the same way as a communication between a person and a solicitor or, as the case may be, a communication for the purpose of obtaining, or in response to a request for, information which a person is seeking for the purpose of instructing a solicitor.

(3) In subsection (2) “professional designs representative” means a person whose name appears on the special list of professional representatives for design matters maintained by the European Union Intellectual Property Office referred to in Article 78(4) of Council Regulation (EC) 6/2002 of 12th December 2001 on Community designs as it has effect in EU law.”.

**9.** In section 35ZA(a) (offence of unauthorised copying etc of design in course of business), omit subsection (7).

**10.** In section 44(b) (interpretation), in subsection (1), omit the definitions of “Community Design Regulation” and “registered Community design”.

## PART 2

### Amendments to the Copyright, Designs and Patents Act 1988

**11.** The Copyright, Designs and Patents Act 1988(c) is amended as follows—

- (a) in section 217(d) (qualifying persons and qualifying countries), in subsection (3)—
- (i) in paragraph (b), at the end insert “or”;
  - (ii) omit paragraph (c) together with “or” at the end;
- (b) in section 220(e) (qualification by reference to first marketing), in subsection (1)(b)—
- (i) after “Kingdom” insert “or”;
  - (ii) omit “or another member State of the European Economic Community”.

## PART 3

### Amendments to the Design Right (Proceedings before the Comptroller) Rules 1989

**12.** The Design Right (Proceedings before the Comptroller) Rules 1989(f) are amended as follows.

**13.** In rule 22 (costs), in paragraph (2), omit “or another member State of the European Union”.

**14.** In rule 23 (service and translation of documents), in paragraph (1A), for “another”, substitute “an”.

**15.** In Schedule 1 (forms) for “another”, each time it appears before “EEA state”, substitute “an”.

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- (a) Section 35ZA was inserted by the Intellectual Property Act 2014 (c.18), section 13.
- (b) Section 44 was amended by the Copyright, Designs and Patents Act 1988 (c.48), section 272, Schedule 3, paragraph 31(3),(4),(6),(7),(8),(9) and (10), S.I. 2001/3949, Schedule 2, paragraph 1, 14(2),(3) and (4), S.I. 2003/550, regulation 2(5), S.I. 2006/1229, article 3 and the Intellectual Property Act 2014 (c.18), section 10(6).
- (c) 1988 c.48.
- (d) Section 217 was amended by the Intellectual Property Act 2014 (c.18), section 3(1)(a),(b) and (2).
- (e) Section 220 was amended by S.I. 2011/1043, article 4(1), Intellectual Property Act 2014 (c.18), section 2(2)(g) and 3(4)(a),(b),(c) and (d).
- (f) S.I. 1989/1130 as amended by S.I. 2006/546 and S.I. 2011/1043; there are other amending instruments but none are relevant.

## PART 4

### Further amendments to the 1994 Act

**16.** The 1994 Act is further amended as follows.

**17.—**(1) Section 6(a) is amended as follows.

(2) Before subsection (1)(b) insert—

“(ab) a comparable trade mark (IR) or a trade mark registered pursuant to an application made under paragraph 28, 29 or 33 of Schedule 2B which has a valid claim to seniority of an earlier registered trade mark or protected international trade mark (UK) even where the earlier trade mark has been surrendered or its registration has expired;”.

(3) At the end of subsection (2) insert “(taking account of subsection (2C))”.

(4) Before subsection (3) insert—

“(2B) References in this Act to an earlier trade mark include a trade mark in respect of which an application for registration has been made pursuant to paragraph 28, 29 or 33 of Schedule 2B and which if registered would be an earlier trade mark by virtue of subsection (1)(ab), subject to its being so registered.

(2C) Where an application for registration of a trade mark has been made pursuant to paragraph 25 of Schedule 2A or paragraph 28, 29 or 33 of Schedule 2B, subsection (1)(a) is to apply as if the date of application for registration of the trade mark were—

- (a) in the case of an application made pursuant to paragraph 25 of Schedule 2A, the relevant date referred to in paragraph 25(2) in respect of that application;
- (b) in the case of an application made pursuant to paragraph 28 of Schedule 2B, the relevant date referred to in paragraph 28(2) in respect of that application (taking account of paragraph 28(5));
- (c) in the case of an application made pursuant to paragraph 29 of Schedule 2B, the relevant date referred to in paragraph 29(2) in respect of that application (taking account of paragraph 29(4));
- (d) in the case of an application made pursuant to paragraph 33 of Schedule 2B, the relevant date referred to in paragraph 33(2) or (3) (as the case may be) in respect of that application (taking account of paragraph 33(4)).”

**18.** In section 53(b) omit ““international trade mark (EC)” means a trade mark which is entitled to protection in the European Union under that Protocol;”.

**19.—**(1) Section 104 is amended as follows.

(2) Before the entry in the table for “Convention country” insert—

“comparable trade mark (IR)	Schedule 2B, paragraph 1(4)”
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(3) Before the entry in the table for “date of filing” insert—

“date of application (comparable trade mark (IR))	Schedule 2B, paragraph 1(10)(b)”
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(4) Before the entry in the table for “date of registration” insert—

“date of filing (comparable trade mark (IR))	Schedule 2B, paragraph
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(a) Section 6 was amended by S.I. 1999/1899, regulation 13(1), S.I. 2004/2332, regulations 2 and 4, S.I. 2016/299, the Schedule, paragraph 1 and S.I. 2018/825, regulation 7.

(b) Section 53 was amended by S.I. 2004/2332, regulation 5 and S.I. 2011/1043, article 4(1).

	1(10)(a)”
(5) Before the entry in the table for “defendant (in Scotland)” insert—	
“date of registration (comparable trade mark (IR))	Schedule 2B, paragraph 1(6)”
(6) Omit the entry in the table for—	
“international trade mark (EC)	Section 53”

### 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 12<sup>th</sup> 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 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](http://www.legislation.gov.uk).

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