
EXPLANATORY NOTE

(This note is not part of the Regulations)

This Instrument implements or further implements the following Community instruments—

- (a) Directive of the European Parliament and of the Council of 29 April 2004 on the enforcement of intellectual property rights (2004/48/EC) (OJ L157, 30.4. 2004 p.45, a corrigendum was published in OJ L195, 2.6.2004 p.16) (“the Enforcement Directive”);
- (b) Agreement establishing the World Trade Organisation (including the Agreement on Trade-Related Aspects of Intellectual Property Rights (Cm. 3044-6, 3080, 3263-4, 3268-9, 3271, 3275-7 and 3282) (“TRIPS”) which was specified as a Community treaty by [SI 1995/265](#);
- (c) Directive of the European Parliament and of the Council of 13 October 1998 on the legal protection of designs (98/71/EC) (OJ L289, 28.10.98 p. 28) (“the Designs Directive”);
- (d) Council Regulation of 12 December 2001 on Community designs (EC) Regulation No. 6 of 2002 (OJ. L3, 5. 1. 2002 p.1) (“the Community Design Regulation”); and
- (e) European Economic Area Agreement (“EEA Agreement”).

Regulation 3 implements Article 13 of the Enforcement Directive. It sets out the grounds on which damages should be awarded against a person who knowingly infringes an intellectual property right.

Regulation 4 implements Article 8 of the Enforcement Directive in Scotland. It creates a new type of court order, for disclosure of information about infringing goods and services. By reason of the House of Lords decision in *Norwich Pharmacal v Customs and Excise Commissioners* [1974] AC 133 no provision is necessary to implement this obligation in England and Wales or Northern Ireland.

Regulation 5 implements Article 15 of the Enforcement Directive in Scotland. It creates a new type of court order, for the dissemination and publication of a judgment at the defender’s expense. This Article was implemented in England and Wales by changes made to the Civil Procedure Rules (by [SI 2005/3515 \(L. 32\)](#)).

Schedule 1 amends the Registered Designs Act 1949 (c. 88).

Paragraph 2 of that Schedule inserts new sections 15A and 15B (property in and dealing with registered designs and applications) to make further provisions relating to the Community Design Regulation and the Designs Directive. It also inserts a new section 15C which makes provision relating to or arising out of Article 4 of the Enforcement Directive.

Paragraph 3 of that Schedule inserts new section 24A to 24G (actions for infringement, innocent infringement, delivery up and disposal of infringing articles, rights and remedies of exclusive licensees) to implement sections 5 to 7 of the Enforcement Directive.

Paragraph 5 of that Schedule substitutes a new section 45 for that in the Act, which contains definitions for Scotland.

Schedule 2 amends the Patents Act 1977 (c. 37), the Copyright, Designs and Patents Act 1988 (c. 48) and the Trade Marks Act 1994 (c. 26).

Paragraphs 1 to 5 of that Schedule amend sections 62, 63 and 68 of the Patents Act 1977 (restriction on recovery of damages, relief for infringement of a partially invalid patent and effect of non-registration) to implement Article 13(1) of the Enforcement Directive. They also make a minor amendment to section 130 of that Act (interpretation) to further implement TRIPS.

Paragraphs 6 to 14 of that Schedule amend the Copyright, Designs and Patents Act 1988. They amend references to the EEA in sections 172A, 179, 211 and 212 in order to re-implement the EEA

Status: This is the original version (as it was originally made). This item of legislation is currently only available in its original format.

Agreement and amend sections 114, 204 and 231 to include references to the new section 24D of the Registered Designs Act 1949, the new regulation 1C of the Community Design Regulations 2005 and the application of section 19 of the Trade Marks Act 1994 by the Community Trade Mark Regulations 2006 (SI 2006/1027). They also insert a new section 197A, which creates a new presumption in relation to recordings of performances, in order to implement Article 5 of the Enforcement Directive.

Schedule 3 makes amendments to the Duration of Copyright and Rights in Performances Regulations 1995 (SI 1995/3297), the Copyright and Related Rights Regulations 1996 (SI 1996/2967), the Copyright and Rights in Databases Regulations 1997 (SI 1997/3032) and the Community Design Regulations 2005 (SI 2005/696).

Paragraph 1 of that Schedule amends the reference to the EEA in regulation 2 of the Duration of Copyright and Rights in Performances Regulations 1995.

Paragraphs 2 to 5 of that Schedule amend the Copyright and Related Rights Regulations 1996. They amend the reference to the EEA in regulation 2 and insert new regulations 17A and 17B, which create a new presumption in relation to publication right, in order to implement Article 5 of the Enforcement Directive.

Paragraph 6 of that Schedule amends the Copyright and Rights in Database Regulations 1997 by substituting a new regulation 23, on the application of copyright provisions to database right, in order to implement sections 5 to 7 of the Enforcement Directive.

Paragraphs 7 to 10 of that Schedule amend the Community Design Regulations 2005 by inserting new regulations 1A to 1D (infringement proceedings, orders for delivery up and disposal of infringing articles) and regulation 5A which contains definitions for Scotland. It also makes a consequential amendment to regulation 1(2) of those Regulations.

Schedule 4 contains repeals and revocations.

A regulatory impact assessment and transposition note is available, copies of which have been placed in the libraries of both Houses of Parliament. Copies of the assessment and transposition note are also available from the Intellectual Property and Innovation Directorate, The Patent Office, Concept House, Newport NP10 8QQ and the Patent Office website www.patent.gov.uk.