

DRAFT STATUTORY INSTRUMENT TO ILLUSTRATE THE USE OF POWERS UNDER THE EUROPEAN UNION (WITHDRAWAL) BILL

Covering note on the draft The Design Right (Semiconductor Topographies) (Amendment) (EU Exit) Regulations 2018

Context and overview

The Government intends to use the powers under clause 7 of the European Union (Withdrawal) Bill (“The Bill”) to make amendments to UK domestic and retained EU intellectual property legislation.

The Bill itself will ensure that EU-derived intellectual property law, as it applies before exit, will continue to be available in domestic law after the UK has left the EU. However, in addition, some technical amendments to existing legislation are required to ensure the existing legal framework that provides for intellectual property rights continues to operate effectively, for example by removing EU references that are no longer appropriate.

This statutory instrument, which the Government has made available in draft form, provides an example of the sort of amendments that are required to ensure domestic law functions correctly.

Detail

A Semiconductor Topography is a series of images representing the 3D pattern of layers of conducting, insulating and semiconducting material that make up a semiconductor product (for example circuit boards). The functions of semiconductor products depend to a large part on these patterns. Protection of these rights is a requirement set out in the WTO Trade-Related Aspects of Intellectual Property Rights (TRIPS) agreement.

This SI makes minor technical changes to the Design Right (Semiconductor Topographies) Regulations 1989 (SI 1989 No 1100) (“the Regulations”) which implement Council Directive 87/54/EEC, as amended by The Design Right (Semiconductor Topographies) (Amendment) Regulations 2006 (SI 2006/1833) and The Design Right (Semiconductor Topographies) (Amendment)(No.2) Regulations 2008 (SI 2008/1434). The amendments address failures of the Regulations to operate effectively arising from the withdrawal of the United Kingdom from the EU. Specifically, the Regulations are amended so that:

- (i) the reference to ‘Member State’ in the list of qualifying countries reflects the position of the United Kingdom as no longer being a member State;
- (ii) the qualification requirement relating to first marketing is amended so that it applies only in relation to first marketing in the United Kingdom;
- (iii) wording which has become unnecessary, adapting how a provision of the Copyright, Designs and Patents Act 1988 applies, is removed.

In the UK, the law treats Semiconductor Topographies as a form of unregistered design right. The Regulations set out how Part 3 (Design Right) of the Copyright, Designs and Patents Act 1988 shall be applied to Semiconductor Topographies. They were made under s2(2) of the European Communities Act 1972.