

# SECOND SUPPLEMENT TO THE GIBRALTAR GAZETTE

No. 4800 GIBRALTAR Thursday 24th December 2020

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LEGAL NOTICE NO. 534 OF 2020.

## EUROPEAN UNION (WITHDRAWAL) ACT 2019

### UNREGISTERED DESIGNS (AMENDMENT) (EU EXIT) REGULATIONS 2020

In exercise of the powers conferred upon him by sections 11 and 11B of, and paragraph 1(b) of Schedule 3 to, the European Union (Withdrawal) Act 2019, the Minister has made the following Regulations-

#### **Title.**

1. These Regulations may be cited as the Unregistered Designs (Amendment) (EU Exit) Regulations 2020.

#### **Commencement.**

2. These Regulations come into operation on IP completion day.

#### **Interpretation.**

3.(1) In these Regulations-

“Design Regulation” means Council Regulation (EC) No 6/2002 of 12<sup>th</sup> December on Community Designs as amended by Council Regulation (EC) 1891/2006 of 18<sup>th</sup> 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 5<sup>th</sup> December 2011 on the admission of the Republic of Croatia to the European Union”.

(2) In these Regulations, a reference to an Article is to an Article of the Design Regulation.

#### **Unregistered Community designs existing immediately before IP completion day.**

4. The Design Regulation shall apply to an unregistered Community design which is protected under the Design Regulation immediately prior to IP completion day and that design remains protected on IP completion day and is referred to as a continuing unregistered Community design.

#### **Amendments to the Design Regulation.**

5.(1) The Design Regulation is amended in accordance with this regulation.

- (2) In Article 1-
- (a) in the heading, before “Community” insert “Continuing unregistered”;
  - (b) in paragraph 1 before “Community” and within the inverted commas insert “continuing unregistered”;
  - (c) in paragraph 2(a)-
    - (i) for “an” substitute “a”; and
    - (ii) before “unregistered” and within the inverted commas insert “continuing”;
  - (d) delete paragraphs 2(b) and 3.
- (3) Delete Article 2.
- (4) In Article 3 after the definition of “design” insert-
- “(ab) “European Union” means the countries that were part of the European Union immediately before IP completion day;”.
- (5) In Article 4(1) before “Community” insert “continuing unregistered”.
- (6) In Article 5(1)-
- (a) before “design” in the first place where it appears insert “continuing unregistered Community”;
  - (b) in subparagraph (a) delete “in the case of an unregistered Community design”;
  - (c) delete subparagraph (b).
- (7) In Article 6(1)-
- (a) before “design” in the first place it appears insert “continuing unregistered Community”;
  - (b) in subparagraph (a) delete “in the case of an unregistered Community design;”;
  - (c) delete subparagraph (b).
- (8) In Article 7-
- (a) in paragraph 1-

- (i) after “a” in the first place where it appears insert “continuing unregistered Community”;
  - (ii) delete “following registration or otherwise,”;
  - (iii) delete “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) delete paragraphs 2 and 3.
- (9) In Articles 8, 9 and 10(1) before “Community” in each place where it appears substitute “continuing unregistered”.
- (10) In Article 11-
- (a) in paragraph 1-
    - (i) for “an” substitute “a continuing”;
    - (ii) for “Community” in the second place where it appears substitute “European Union”;
  - (b) in paragraph 2 for “Community” in both places where it appears substitute “European Union”.
- (11) Delete articles 12 and 13.
- (12) In Article 14-
- (a) before “Community” in each place where it appears including in the heading insert “continuing unregistered”;
  - (b) in paragraph 3 delete “or specified under national law”.
- (13) In Article 15-
- (a) in the heading before “Community” insert “continuing unregistered”;
  - (b) in paragraph 1-
    - (i) for “an” substitute “a continuing”;
    - (ii) delete “, or a registered Community design has been applied for or registered in the name of,”;
    - (iii) for “the Community” substitute “that”;

- (c) in paragraph 2 before “Community” insert “continuing unregistered”;
  - (d) in paragraph 3-
    - (i) delete “the date of publication of a registered Community design or”;
    - (ii) for “an” substitute “a continuing”;
    - (iii) for “the Community” substitute “that”;
    - (iv) delete “was applied for or”;
  - (e) delete paragraph 4.
- (14) Delete Articles 16 to 18.
- (15) In Article 19-
- (a) in the heading before “Community” insert “continuing unregistered”;
  - (b) in paragraph 1 for “registered” substitute “continuing unregistered”;
  - (c) in paragraph 2 for “An” where it first appears substitute “A continuing”;
  - (d) delete paragraph 3.
- (16) In Article 20-
- (a) in the heading and in paragraph 1 before “Community” insert “continuing unregistered”;
  - (b) in paragraph 2-
    - (i) in the words before subparagraph (a), before “Community” insert “continuing unregistered”;
    - (ii) in subparagraphs (a) and (b) for “the Community” substitute “Gibraltar”.
- (17) In Article 21-
- (a) before “Community” in the first, second and fourth places where it appears insert “continuing unregistered”;
  - (b) for “the Community” in the third place where it appears insert “Gibraltar, the United Kingdom or the European Union”.

(18) Delete Articles 22 and 23.

(19) In Article 24-

(a) delete paragraph 1;

(b) in paragraph 2-

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

(ii) delete “or has been surrendered”;

(c) in paragraph 3-

(i) for “An” substitute “ A continuing”;

(ii) for “a Community design court” substitute “the Supreme Court”.

(20) In Article 25-

(a) in paragraph 1-

(i) in the words before subparagraph (a), before “Community” insert “continuing unregistered”;

(ii) in subparagraph (c) delete “Community”;

(iii) delete subparagraph (d);

(iv) in subparagraph (e)-

(aa) delete “Community law or”;

(bb) delete “of the Member State”;

(v) in subparagraph (f)-

(aa) delete “the” in the second place it appears;

(bb) delete “of a Member State”;

(vi) in subparagraph (g) for “a Member State” substitute “the European Union”;

(b) in paragraph 2 before “Community” insert “continuing unregistered”;

- (c) in paragraph 3-
    - (i) delete “(d),”;
    - (ii) delete “applicant for or”;
  - (d) delete paragraphs 5 and 6.
- (21) In Article 26-
- (a) in paragraph 1 before “Community” insert “continuing unregistered”;
  - (b) in paragraph 2 in the words before subparagraph (a)-
    - (i) delete “the national provisions relating either to”;
    - (ii) before “Community” in both places where it appears insert “continuing unregistered”.
- (22) In Article 27-
- (a) for the heading substitute “Property right”;
  - (b) for paragraphs 1 to 4 substitute “A continuing unregistered Community design right is personal property which subsists in accordance with this Regulation.”.
- (23) Delete Articles 28 to 31.
- (24) In Article 32-
- (a) in paragraph 1-
    - (i) before “Community” in the first place where it appears insert “continuing unregistered”;
    - (ii) delete “for the whole or part of the Community”;
  - (b) in paragraphs 2 to 4 before “Community” in every place where it appears insert “continuing unregistered”;
  - (c) delete paragraph 5.
- (25) Delete Articles 33 to 80.

(26) For Article 81 substitute-

“Article 81

**Jurisdiction over infringement and validity**

The Supreme Court shall have exclusive jurisdiction-

- (a) for infringement actions and actions in respect of threatened infringement of continuing unregistered Community designs;
- (b) for actions for declaration of non-infringement of continuing unregistered Community designs;
- (c) for actions for a declaration of invalidity of a continuing unregistered Community design.
- (d) for counterclaims for a declaration of invalidity of a continuing unregistered Community design raised in connection with actions under (a).”.

(27) For Articles 82 to 83 substitute-

“Article 82

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

1. This Article applies where on IP completion day a continuing unregistered Community design is the subject of proceedings which are pending (“pending proceedings”) before the Supreme Court.
2. Subject to 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 Gibraltar were still a Member State with effect from IP completion 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 Supreme Court may grant an injunction to prohibit unauthorised use of the continuing unregistered Community design.
4. For the purposes of this Article proceedings are treated as pending on IP completion day if they were instituted but not finally determined before IP completion day.

Article 83

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

1. This Article applies where immediately before IP completion day an injunction is in force prohibiting the performance of acts in Gibraltar 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 IP completion day.”.

(28) In Article 84-

- (a) in the heading and in paragraph 1 before “Community” insert “continuing unregistered”;
- (b) in paragraph 2-
  - (i) before “(4)” insert “and”;
  - (ii) delete “and (5)”;
- (c) in paragraph 3-
  - (i) before “Community” insert “continuing unregistered”;
  - (ii) for “conditions” to “situated” substitute “laws applying to the Supreme Court”;
- (d) in paragraph 4 before “Community” insert “continuing unregistered”.

(29) In Article 85-

- (a) delete paragraph 1;
- (b) in paragraph 2-
  - (i) for “an” in the third place where it appears substitute “a continuing unregistered”;
  - (ii) for “Community design court” substitute “the Supreme Court”;
  - (iii) before “Community” in the third and fourth places where it appears insert “continuing unregistered”.



(30) In Article 86-

(a) in paragraph 1-

- (i) for “a Community design court” substitute “the Supreme Court”;
- (ii) before “Community” in the second place it appears insert “continuing unregistered”;
- (iii) in subparagraphs (a) and (b) for “the Community” in each place where it appears substitute “that”;

(b) delete paragraphs 2 to 5.

(31) Delete Articles 87 and 88.

(32) In Article 89-

(a) in paragraph 1-

- (i) for “a Community design court” substitute “the Supreme Court”;
- (ii) before Community in the second place it appears insert “continuing unregistered”;
- (iii) in subparagraph (a) for “the Community” substitute “that”;
- (iv) in subparagraph (d) delete from “the law” to “international”.

(b) delete paragraph 2.

(33) In Article 90-

(a) in paragraph 1-

- (i) for “courts of a Member State” substitute “Supreme Court”;
- (ii) delete “, including Community design courts,”
- (iii) before “Community” in the second place it appears insert “continuing unregistered”;
- (iv) delete from “under the law” to the end of the sentence;

(b) in paragraph 2 before “Community” insert “continuing unregistered”;

- (c) in paragraph 3-
  - (i) for “A Community design court” substitute “The Supreme Court”;
  - (ii) delete from “whose” to “(4)”;
  - (iii) delete from “, which” to “jurisdiction”.
- (34) Delete Articles 91, 92 and 93.
- (35) In Article 94-
  - (a) in the heading for “national court” substitute “Supreme Court”;
  - (b) for “A national court” substitute “The court”;
  - (c) before “Community” insert “continuing unregistered”.
- (36) Delete Titles 10, 11 and 11a.
- (38) Delete Articles 107 to 109.
- (39) In Article 110-
  - (a) in paragraph 1-
    - (i) delete from “Until” to “subject,”;
    - (ii) before “Community” insert “continuing unregistered”
  - (b) delete paragraph 2.
- (40) In Article 110a-
  - (a) in paragraph 1-
    - (i) for ““new Member State(s)”” substitute ““specified countries””;
    - (ii) before “Community” the first time it appears insert “continuing unregistered”;
    - (iii) delete “or applied for”;
    - (iv) for “Member States” the second time it appears substitute “specified countries”;

- (v) delete from “in order” to the end of the sentence;
- (b) delete paragraph 2;
- (c) in paragraph 3-
  - (i) before “Community” insert “continuing unregistered”;
  - (ii) for “a new Member State” substitute “one or more specified countries”;
- (d) in paragraph 4-
  - (i) delete “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)” delete “(d),”.
- (e) in paragraph 5-
  - (i) delete the first sentence;
  - (ii) for “Community” the second time it appears substitute “European Union”;
  - (iii) for “an” substitute “a continuing”.

(41) In Article 111 delete paragraphs 2 and 3 and the last sentence beginning “This Regulation” until the end.

Dated: 24<sup>th</sup> December 2020.

A J ISOLA,  
Minister for Digital, Financial Services and Public Utilities.

## **EXPLANATORY MEMORANDUM**

These Regulations are made in exercise of the powers conferred by sections 11 and 11B of, and paragraph 1(b) of Schedule 3 to, the European Union (Withdrawal) Act 2019 in order to address failures of retained EU law to operate effectively and other deficiencies arising from the withdrawal from the European Union.

These Regulations make amendments to the Design Regulation (Council Regulation (EC) No 6/2002 of 12<sup>th</sup> December on Community Designs as amended by Council Regulation (EC) 1891/2006 of 18<sup>th</sup> 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 5<sup>th</sup> December 2011 on the admission of the Republic of Croatia to the European Union.