EXPLANATORY MEMORANDUM TO

THE DESIGN RIGHT (SEMICONDUCTOR TOPOGRAPHIES) (AMENDMENT) (EU EXIT) REGULATIONS 2018

2018 No. 1052

1. Introduction

1.1 This explanatory memorandum has been prepared by the Intellectual Property Office, an Executive Agency of the Department of Business, Energy and Industrial Strategy and is laid before Parliament by Act.

1.2 This memorandum contains information for the Joint Committee on Statutory Instruments.

2. Purpose of the instrument

2.1 This instrument amends provisions in retained EU law relating to the treatment of semiconductor topographies as an unregistered design right under the Copyright, Designs and Patents Act 1988 ("CPDA").

Explanations

What did any relevant EU law do before exit day?

2.2 The Design Right (Semiconductor Topographies) Regulation 1989 ("the SCT Regulations") modify the application of Part 3 of the CPDA to designs which are a semiconductor topography. The SCT Regulations implement Council Directive 87/54/EEC on the legal protection of topographies of semiconductor products.

Why is it being changed?

2.3 The amendments made to the SCT Regulations by this instrument address deficiencies in this retained EU law as a result of the withdrawal of the United Kingdom from the EU.

What will it now do?

2.4 The SCT Regulations will continue to set out how Part 3 (design right) of the CPDA applies to semiconductor topographies with the technical changes mentioned in section 7.6 to reflect the fact of the withdrawal of the United Kingdom from the EU.

3. Matters of special interest to Parliament

Matters of special interest to the Joint Committee on Statutory Instruments

3.1 This instrument was laid for sifting on the 23 July 2018. The Sifting Committees considered the instrument and both confirmed on the 5 September 2018 that they are content for it to remain subject to the negative procedure.

Matters relevant to Standing Orders Nos. 83P and 83T of the Standing Orders of the House of Commons relating to Public Business (English Votes for English Laws)

3.2 As the instrument is subject to negative resolution procedure there are no matters relevant to Standing Orders Nos. 83P and 83T of the Standing Orders of the House of Commons relating to Public Business at this stage.

4. Extent and Territorial Application

4.1 The territorial extent of this instrument is the United Kingdom.

4.2 The territorial application of this instrument is the United Kingdom.

5. European Convention on Human Rights

5.1 As the instrument is subject to negative resolution procedure, and does not amend primary legislation, no statement is required.

6. Legislative Context

6.1 The European Union (Withdrawal) Act 2018 provides for the Secretary of State to deal with deficiencies in retained EU law arising from the withdrawal of the UK from the EU. Retained EU law includes provisions made under section 2(2) of the European Communities Act 1972 such as the SCT Regulations.

7. Policy background

What is being done and why?

7.1 This instrument corrects deficiencies in retained EU law arising from the withdrawal of the UK from the EU.

7.2 A SCT 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 and they are relatively easy to copy.

7.3 The European Commission considered that semiconductor technology was essential for the Community's industrial development. In 1987 the Council Directive 87/54/EEC [1]provided a legal framework for the protection of topographies of semiconductor products. That Directive was implemented into UK law by the SCT Regulations.

7.4 In the UK, the law treats SCTs 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 SCTs. They were made under s2(2) of the European Communities Act 1972. In addition, the WTO TRIPS agreement requires members to protect these products.

7.5 **This instrument amends the SCT Regulations so that:**

I. The reference to 'member State' in the list of qualifying countries reflects the position of the United Kingdom as no longer 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;

[1] https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:31987L0054&from=EN

III. Wording adapting how a provision of the CPDA applies, which is no longer required as a result of the amendment to the qualification requirement, is removed.

8. European Union (Withdrawal) Act/Withdrawal of the United Kingdom from the European Union

8.1 This instrument is being made using the power in section 8 of the European Union (Withdrawal) Act 2018 in order to address failures of retained EU law to operate effectively or other deficiencies arising from the withdrawal of the United Kingdom from the European Union. The instrument is also being made under paragraph 21(b) of Schedule 7 to that Act. In accordance with the requirements of that Act the Minister has made the relevant statements as detailed in Part 2 of this Explanatory Memorandum.

9. Consolidation

9.1 Not applicable.

10. Consultation outcome

10.1 The Intellectual Property Office has undertaken informal consultation with stakeholders. Additionally, a draft version of this instrument was published on https://www.gov.uk/government/publications/information-about-the-withdrawal-bill in April 2018 and has not attracted any comments from stakeholders.

11. Guidance

11.1 Guidance is not required.

12. Impact

12.1 There is no, or no significant, impact on business, charities or voluntary bodies.

12.2 There is no, or no significant, impact on the public sector.

12.3 A De Minimis Impact Assessment is submitted with this memorandum and is published on the https://www.gov.uk/ website. As the current system for semiconductor protection will remain there will be no impact on business and therefore zero cost.

13. Regulating small business

13.1 The legislation does not apply to activities that are undertaken by small businesses.

13.2 Semiconductor topography protection is an automatic right. Businesses of any size do not need to comply with administrative procedures to benefit from protection.

14. Monitoring & review

14.1 As this instrument is made under the EU Withdrawal Act 2018, no review clause is required.

15. Contact

15.1 Natasha Chick at the Intellectual Property Office email: Natasha.chick@ipo.gov.uk can be contacted with any queries regarding the instrument.

15.2 Liz Coleman Divisional Director at the Intellectual Property Office can confirm that this Explanatory Memorandum meets the required standard.

15.3 Sam Gyimah Minister of State for Universities, Science, Research and Innovation can confirm that this Explanatory Memorandum meets the required standard.

Annex

Statements under the European Union (Withdrawal) Act 2018

Part 1

Table of Statements under the 2018 Act

This table sets out the statements that may be required under the 2018 Act.

Statement	Where the requirement sits	To whom it applies	What it requires
Sifting	Paragraphs 3(3), 3(7) and 17(3) and 17(7) of Schedule 7	Ministers of the Crown exercising sections 8(1), 9 and 23(1) to make a Negative SI	Explain why the instrument should be subject to the negative procedure and, if applicable, why they disagree with the recommendation(s) of the SLSC/Sifting Committees
Appropriate-ness	Sub-paragraph (2) of paragraph 28, Schedule 7	Ministers of the Crown exercising sections 8(1), 9 and 23(1) or jointly exercising powers in Schedule 2	A statement that the SI does no more than is appropriate.
Good Reasons	Sub-paragraph (3) of paragraph 28, Schedule 7	Ministers of the Crown exercising sections 8(1), 9 and 23(1) or jointly exercising powers in Schedule 2	Explain the good reasons for making the instrument and that what is being done is a reasonable course of action.
Equalities	Sub-paragraphs (4) and (5) of paragraph 28, Schedule 7	Ministers of the Crown exercising sections 8(1), 9 and 23(1) or jointly exercising powers in Schedule 2	Explain what, if any, amendment, repeals or revocations are being made to the Equalities Acts 2006 and 2010 and legislation made under them. State that the Minister has had due regard to the need to eliminate discrimination and other conduct prohibited under the Equality Act 2010.
Explanations	Sub-paragraph (6) of paragraph 28, Schedule 7	Ministers of the Crown exercising sections 8(1), 9 and 23(1) or jointly exercising powers in Schedule 2 In addition to the statutory obligation the Government has made a political commitment to include these statements alongside all EUWA Sis	Explain the instrument, identify the relevant law before exit day, explain the instrument's effect on retained EU law and give information about the purpose of the instrument, e.g., whether minor or technical changes only are intended to the EU retained law.

Criminal offences	Sub-paragraphs (3) and (7) of paragraph 28, Schedule 7	Ministers of the Crown exercising sections 8(1), 9, and 23(1) or jointly exercising powers in Schedule 2 to create a criminal offence	Set out the 'good reasons' for creating a criminal offence, and the penalty attached.
Sub-delegation	Paragraph 30, Schedule 7	Ministers of the Crown exercising sections 10(1), 12 and part 1 of Schedule 4 to create a legislative power exercisable not by a Minister of the Crown or a Devolved Authority by Statutory Instrument.	State why it is appropriate to create such a sub-delegated power.
Urgency	Paragraph 34, Schedule 7	Ministers of the Crown using the urgent procedure in paragraphs 4 or 14, Schedule 7.	Statement of the reasons for the Minister's opinion that the SI is urgent.
Explanations where amending regulations under 2(2) ECA 1972	Paragraph 13, Schedule 8	Anybody making an SI after exit day under powers outside the European Union (Withdrawal) Act 2018 which modifies subordinate legislation made under s. 2(2) ECA	Statement explaining the good reasons for modifying the instrument made under s. 2(2) ECA, identifying the relevant law before exit day, and explaining the instrument's effect on retained EU law.
Scrutiny statement where amending regulations under 2(2) ECA 1972	Paragraph 16, Schedule 8	Anybody making an SI after exit day under powers outside the European Union (Withdrawal) Act 2018 which modifies subordinate legislation made under s. 2(2) ECA	Statement setting out: a) the steps which the relevant authority has taken to make the draft instrument published in accordance with paragraph 16(2), Schedule 8 available to each House of Parliament, b) containing information about the relevant authority's response to— (i) any recommendations made by a committee of either House of Parliament about the published draft instrument, and (ii) any other representations made to the relevant authority about the published draft instrument, and, c) containing any other information that the relevant authority considers appropriate in relation to the scrutiny of the instrument or draft instrument which is to be laid.

Part 2

Statements required when using enabling powers under the European Union (Withdrawal) 2018 Act

1. Sifting statement(s)

1.1 Minister of State Sam Gyimah, Minister of State` for Universities, Science, Research and Innovation has made the following statement regarding use of legislative powers in the European Union (Withdrawal) Act 2018:

"In my view the Design Right (Semiconductor Topographies) (Amendment) (EU Exit) Regulations 2018 should be subject to annulment in pursuance of a resolution of either House of Parliament (i.e. the negative procedure)."

1.2 This is because in addressing failures of retained EU law arising from the withdrawal of the United Kingdom from the EU the instrument makes amendments of a technical nature.

2. Appropriateness statement

2.1 Minister of State Sam Gyimah Minister of State for Universities, Science, Research and Innovation has made the following statement regarding use of legislative powers in the European Union (Withdrawal) Act 2018:

"In my view the Design Right (Semiconductor Topographies) (Amendment) (EU Exit) Regulations 2018 do no more than appropriate."

2.2 This is because they prevent, remedy or mitigate deficiencies in retained EU law arising from the withdrawal of the United Kingdom from the EU as mentioned in section 7.6 of the explanatory memorandum.

3. Good reasons

3.1 Minister of State Sam Gyimah Minister of State for Universities, Science, Research and Innovation has made the following statement regarding use of legislative powers in the European Union (Withdrawal) Act 2018:

"In my view there are good reasons for the provisions in this instrument, and I have concluded they are a reasonable course of action for the reasons mentioned in section 7.6 of the explanatory memorandum".

4. Equalities

4.1 Minister of State Sam Gyimah MP Minister of State for Universities, Science, Research and Innovation has made the following statement:

"The instrument does not amend, repeal or revoke a provision or provisions in the Equality Act 2006 or the Equality Act 2010 or subordinate legislation made under those Acts".

5. Explanations

5.1 The explanations statement has been made in section 2 of the main body of this explanatory memorandum.