

Statutory Document No. 1993/0527

*European Communities (Isle of Man) Act 1973*

DESIGN RIGHT (SEMICONDUCTOR TOPOGRAPHIES) REGULATIONS 1993¹

Laid before Tynwald: 18 January 1994
Coming into Operation: 1 January 1994

In exercise of the powers conferred on the Council of Ministers by section 2B of the European Communities (Isle of Man) Act 1973¹, and of all other enabling powers, and for the purpose of implementing Council Directive 87/54/EEC on the legal protection of topographies of semiconductor products², the following Regulations are hereby made: —

Editorial Note: This instrument, made under the European Communities (Isle of Man) Act 1973, is continued by virtue of section 6 of the European Union and Trade Act 2019.

1 Citation and commencement

These Regulations may be cited as the Design Right (Semiconductor Topographies) Regulations 1993 and shall come into operation on the 1st January 1994.

2 Interpretation

(1) In these Regulations —

“**the Act**” means the Design Right Act 1991³;

“**semiconductor product**” means an article the purpose, or one of the purposes, of which is the performance of an electronic function and which consists of two or more layers, at least one of which is composed of semiconducting material and in or upon one or more of which is fixed a pattern appertaining to that or another function; and

“**semiconductor topography**” means a design within the meaning of section 1(2) of the Act which is a design of either of the following: —

(a) the pattern fixed, or intended to be fixed, in or upon —

¹ 1973 c.14

² OJ No. L.24, 27.1.1987, p.36

³ 1991 c.8

- (i) a layer of a semiconductor product, or
 - (ii) a layer of material in the course of and for the purpose of the manufacture of a semiconductor product, or
 - (b) the arrangement of the patterns fixed, or intended to be fixed, in or upon the layers of a semiconductor product in relation to one another.
- (2) Except where the context otherwise requires, these Regulations shall be construed as one with the Act.

3 Application of the Act

In its application to a design which is a semiconductor topography, the Act shall have effect subject to regulations 4 to 9.

4 Qualification

- (1) Section 1(5) of the Act has effect subject to paragraphs (2) to (4).
- (2) For section 5 substitute —
- “5. (1) In this Act —
- “qualifying individual” means a citizen or subject of, or an individual habitually resident in, a qualifying country; and
- “qualifying person” means —
- (a) a qualifying individual,
 - (b) a body corporate or other body having legal personality which has in any qualifying country or in Gibraltar a place of business at which substantial business activity is carried on, or
 - (c) a person who falls within one of the additional classes set out in Part I of the Schedule to the Design Right (Semiconductor Topographies) Regulations 1993.
- (2) References in this Part to a qualifying person include the Crown and the government of any other qualifying country.
- (3) In this section “qualifying country” means —
- (a) the Isle of Man,
 - (b) the United Kingdom, or
 - (c) a member State of the European Economic Community.²
- (4) The reference in the definition of “qualifying individual” to a person’s being a citizen or subject of a qualifying country shall be construed in relation to the United Kingdom as a reference to this being a British Citizen.

- (5) In determining for the purpose of the definition of “qualifying person” whether substantial business activity is carried on at a place of business in any country, no account shall be taken of dealings in goods which are at all material times outside the country.”.
- (3) Where a semiconductor topography is created in pursuance of a commission or in the course of employment and the designer of the topography is, by virtue of section 3 of the Act (as substituted by regulation 5, the first owner of the design right in that topography, section 7 of the Act does not apply and section 6(2) to (4) of the Act shall apply to the topography as if it had not been created in pursuance of a commission or in the course of employment.
- (4) Section 8 of that Act has effect subject to regulation 7 and as if for subsection (1) there were substituted the following —
- “ (1) A design which does not qualify for design right protection under section 6 or 7 (as modified by regulation 4(3) of the Design Right (Semiconductor Topographies) Regulations 1993) or under the said regulation 4(3) qualifies for design right protection if the first marketing of articles made to the design —
- (a) is by a qualifying person who is exclusively authorised to put such articles on the market in the Island, and³
- (b) takes place within the territory of the Island.”^{4 5}

5 Ownership of Design Right

For section 3 substitute —

- “3. (1) The designer is the first owner of any design right in a design which is not created in pursuance of a commission or in the course of employment.
- (2) Where a design is created in pursuance of a commission, the person commissioning the design is the first owner of any design right in it subject to any agreement in writing to the contrary.
- (3) Where, in a case not falling within subsection (2) a design is created by an employee in the course of his employment, his employer is the first owner of any design right in the design subject to any agreement in writing to the contrary.
- (4) If a design qualifies for design right protection by virtue of section 8 (as modified by regulation 4(4) of the Design Right (Semiconductor Topographies) Regulations 1993), the above rules do not apply and, subject to regulation 7 of the said Regulations, the person by whom the articles in question are marketed is the first owner of the design right.”.

6 Duration of design right

- (1) For section 4 substitute —
- “4. The design right in a semiconductor topography expires —
- (a) 10 years from the end of the calendar year in which the topography or articles made to the topography were first made available for sale or hire anywhere in the world by or with the licence of the design right owner, or
 - (b) if neither the topography nor articles made to the topography are so made available within a period of 15 years commencing with the earlier of the time when the topography was first recorded in a design document or the time when an article was first made to the topography, at the end of that period.”
- (2) In section 47(2) (meaning of “marketing”), after “in relation to an article” insert “or a semiconductor topography”.
- (3) The provisions set out in paragraph (1) have effect subject to regulation 7.

7 Confidential information

In determining, for the purposes of section 3(4), 4 or 8 of the Act (as modified by these Regulations), whether there has been any marketing, or anything has been made available for sale or hire, no account shall be taken of any sale or hire, or any offer of exposure for sale or hire, which is subject to an obligation of confidence in respect of information about the semiconductor topography in question unless either —

- (a) the article or semiconductor topography sold or hired or offered or exposed for sale or hire has been sold or hired on a previous occasion (whether or not subject to an obligation of confidence), or
- (b) the obligation is imposed at the behest of the Crown, or of the government of any country outside the Island and the United Kingdom, for the protection of security in connection with the production of arms, munitions or war material.

8 Infringement

- (1) For section 14(1) substitute —
- “14. (1) Subject to subsection 1(A), the owner of design right in a design has the exclusive right to reproduce the design —
- (a) by making articles to that design, or
 - (b) by making a decision document recording the design for the purpose of enabling such articles to be made.
- (1A) Subsection (1) does not apply to —

- (a) the reproduction of a design privately for non-commercial aims; or
 - (b) the reproduction of a design for the purpose of analysing or evaluating the design or analysing, evaluating or teaching the concepts, processes, systems or techniques embodied in it.”.
- (2) Section 15 of the Act does not apply if the article in question has previously been sold or hired within —
- (a) the Island by or with the licence of the owner of design right in the semiconductor topography in question, or
 - (b) the territory of any member State of the European Economic Community or the territory of Gibraltar by or with the consent of the person for the time being entitled to import it into or sell or hire it within that territory.
- (3) Section 16(6) of the Act does not apply.
- (4) It is not an infringement of design right in a semiconductor topography to —
- (a) create another original semiconductor topography as a result of an analysis or evaluation of the first topography or of the concepts, processes, systems or techniques embodied in it, or
 - (b) reproduce that other topography.
- (5) Anything which would be an infringement of the design right in a semiconductor topography if done in relation to the topography as a whole is an infringement of the design right in the topography if done in relation to a substantial part of the topography.

9 Licences of right

Section 24 of the Act does not apply.

10 Transitional provision

In its application to copyright in a semiconductor topography created before the 1st November 1992, section 49(1)(a) of the Act has effect with the omission of the reference to section 24, and accordingly section 49(2) does not apply to such copyright.

11 Repeal

The Design Right (Semiconductor Topographies) Order 1992⁴ is repealed.

⁴ GC 420/92

MADE

17 DECEMBER 1993



SCHEDULE

Regulation 4(2).

ADDITIONAL CLASSES OF QUALIFYING PERSONS

1. British Dependent Territory citizens.
2. Citizens and subjects of any country specified in the table below.
3. Habitual residents of: —
 - (a) the United Kingdom;
 - (b) the Channel Islands;
 - (c) Gibraltar;
 - (d) any colony; or
 - (e) any country specified in the table below.
4. First and bodies corporate formed under the law of, or any part of, —
 - (a) the Island;
 - (b) the United Kingdom;
 - (c) Gibraltar;
 - (d) a member state of the EU; or⁶
 - (e) any country specified in the table below;

with a place of business within any country so specified at which substantial business activity is carried on.

**TABLE
SPECIFIED COUNTRIES**

Australia
Aruba
Austria
Finland
French overseas territories (French Polynesia; French Southern and Antarctic Territories; Mayotte; New Caledonia and dependencies; Saint-Pierre and Miquelon; Wallis and Futuna Islands)
Iceland
Japan
Liechtenstein
Netherlands Antilles
Norway
Sweden
Switzerland
United States of America

ENDNOTES

Table of Endnote References

¹ The format of this legislation has been changed as provided for under section 75 of, and paragraph 2 of Schedule 1 to, the Legislation Act 2015. The changes have been approved by the Attorney General after consultation with the Clerk of Tynwald as required by section 76 of the Legislation Act 2015.

² Para (c) amended by SD2019/0120, with effect from 31/12/2020 at 23:00.

³ Para (a) amended by SD2019/0120, with effect from 31/12/2020 at 23:00.

⁴ Subpara (b) amended by SD2019/0120, with effect from 31/12/2020 at 23:00.

⁵ Subs (1) amended by SD2019/0120, with effect from 31/12/2020 at 23:00.

⁶ Subpara (d) substituted by SD2019/0120, with effect from 31/12/2020 at 23:00.