

# STATES OF JERSEY



Jersey

## **DRAFT INTELLECTUAL PROPERTY (UNREGISTERED RIGHTS) (APPLICATION, TRANSITIONAL PROVISIONS AND SAVINGS) (AMENDMENT) (JERSEY) REGULATIONS 201-**

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Lodged au Greffe on 10th September 2019  
by the Chief Minister

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STATES GREFFE



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## REPORT

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The [Intellectual Property \(Unregistered Rights\) \(Application, Transitional Provisions and Savings\) \(Jersey\) Regulations 2012](#) (“the 2012 Regulations”) made provision as to how works existing under the 1911 Copyright Act were to be treated in certain cases when the [Intellectual Property \(Unregistered Rights\) \(Jersey\) Law 2011](#) (“the Law”) came into effect.

The 2012 Regulations did not directly refer to the UK, which was covered by several Regulations through its membership of the EEA.

The amendments to the 2012 Regulations make it clear that there is to be no change in the status of the UK when it is no longer a Member State.

### **Rule of the shorter term: Regulations 2 to 5**

Regulations 2 to 5 amend Regulations 20 to 23 of the 2012 Regulations.

Regulations 20 to 23 of the 2012 Regulations contain rules about the duration of copyright in existing works of foreign origin. The 2012 Regulations shorten the term of protection for existing foreign works, where the term in the country of origin is less than that under Jersey law. This is known as the rule of the shorter term.

The rules on shorter terms apply to works originating outside Jersey, Guernsey, the Isle of Man, and the EEA. In practice, this means that there is no shortening of term for works originating within Jersey, Guernsey, the Isle of Man and the EEA, and they get the full term of copyright in Jersey.

The default position *without* the Draft Intellectual Property (Unregistered Rights) (Application, Transitional Provisions and Savings) (Amendment) (Jersey) Regulations 201- (“the draft Regulations”) would be that the rule of the shorter term would in theory apply to the UK. This is considered to be a visibly less favourable position than the UK has provided Jersey under the [Copyright Designs and Patents Act 1988](#). The proposed changes are also being made in the context of good relations and wider negotiations on the extension of intellectual property conventions which are taking place with the UK.

In practice, there is unlikely to be any change in Jersey to the treatment of works of foreign provenance as a result of these amendments, because of the high degree of harmonisation of terms of protection throughout the EEA. However, the changes are desirable to promote transparency and to ensure that works originating in the UK are clearly treated as well after BREXIT as before.

### **Amendment to rights of copyright owner in foreign sound recordings: Regulations 6 and 7**

Regulations 6 and 7 amend Regulations 28 and 46 of the 2012 Regulations.

Rights in sound recordings are governed by several international conventions. They vary in which rights they cover. When we give protection in Jersey to foreign sound recordings, the scope of this can be linked to whichever convention a country belongs to. This Regulation varies the protection this way for existing foreign sound recordings.

Rome convention countries are not subject to limitations to the rights that are set out in the relevant 2012 Regulations. Rights for works originating from the UK are not restricted, because it is covered in these Regulations by virtue of its membership of the Rome and WPPT Conventions.

In keeping with changes being made on duration of copyright, these changes are being made to improve transparency and to clearly set out the position of the UK as is set out for the other British Islands.

**Commencement flexibility**

The type of BREXIT which will eventually be delivered remains unclear. The draft Regulations have therefore been drafted to provide for a range of outcomes, including a ‘No Deal’ exit, and the type of exit envisaged by the existing draft Withdrawal Agreement. However, it is still possible that there will be a need to revisit the draft Regulations if a different type of outcome is eventually delivered.

The intention would be to commence Regulations 6 and 7 of the draft Regulations on 31st October (if the UK leaves the EU then), regardless of whether there is a deal or not.

Regulations 3, 4 and 5 would be commenced if there was no deal when the UK left the EU (on 31st October). If there is a deal with a transitional period, these draft Regulations would not be commenced on the UK’s exit (but could be commenced at the end of the transitional period if there was then no relevant agreement on copyright).

Regulation 8(4) will apply if there is a Withdrawal Agreement type of exit, or there is a relevant copyright deal. It will not apply if there is an exit without a relevant deal, because Regulation 2 would be commenced at that point (as well as Regulations 3, 4 and 5).

**Financial and manpower implications**

There are no additional financial or manpower implications for the States arising from the adoption of these draft Regulations.

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## EXPLANATORY NOTE

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The Draft Intellectual Property (Unregistered Rights) (Application, Transitional Provisions and Savings) (Amendment) (Jersey) Regulations 201- if passed will amend the Intellectual Property (Unregistered Rights) (Application, Transitional Provisions and Savings) (Jersey) Regulations 2012 (the “2012 Regulations”). The 2012 Regulations made provision for the application of the Intellectual Property (Unregistered Rights) (Jersey) Law 2011 in relation to rights existing before that Law came into force and in related cases.

The amendments make provision to cater for the departure of the United Kingdom from the European Economic Area and make alternative provision about certain unregistered intellectual property rights in relation to the British Islands (which means the United Kingdom, Jersey, Guernsey and the Isle of Man).

The amendments come into force only when (and if) the Minister for External Relations makes an Order bringing these Regulations into force. The Minister can bring different Regulations into force at different times. But if Regulation 6 or 7 (or any provision of either of those) is brought into force before Regulation 2(1), which deletes Regulation 20(1) of the 2012 Regulations, then in the meantime Regulation 20(1) of the 2012 Regulations is amended to make provision to cater for the departure of the United Kingdom from the European Economic Area.





Jersey

# **DRAFT INTELLECTUAL PROPERTY (UNREGISTERED RIGHTS) (APPLICATION, TRANSITIONAL PROVISIONS AND SAVINGS) (AMENDMENT) (JERSEY) REGULATIONS 201-**

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Jersey

## **DRAFT INTELLECTUAL PROPERTY (UNREGISTERED RIGHTS) (APPLICATION, TRANSITIONAL PROVISIONS AND SAVINGS) (AMENDMENT) (JERSEY) REGULATIONS 201-**

*Made* [date to be inserted]

*Coming into force* [date to be inserted]

**THE STATES** make these Regulations under Article 408 of the Intellectual Property (Unregistered Rights) (Jersey) Law 2011<sup>1</sup> and Articles 2, 5A and 5B of the European Union Legislation (Implementation) (Jersey) Law 2014<sup>2</sup> –

### **1 Intellectual Property (Unregistered Rights) (Application, Transitional Provisions and Savings) (Jersey) Regulations 2012 amended**

The Intellectual Property (Unregistered Rights) (Application, Transitional Provisions and Savings) (Jersey) Regulations 2012<sup>3</sup> are amended in accordance with Regulations 2 to 7.

### **2 Regulation 20 amended (Regulations 21 to 23: interpretation)**

- (1) Regulation 20(1) is deleted.
- (2) In Regulation 20(2)(a) –
  - (a) for “a national of an EEA State” there is substituted “a British citizen”;
  - (b) for “the law of an EEA State” there is substituted “the law of any country forming part of the British Islands”.

### **3 Regulation 21 amended (duration of copyright in foreign literary, dramatic, musical or artistic works – Article 25)**

- (1) In Regulation 21(1) –
  - (a) for “not an EEA State” there is substituted “not a country forming part of the British Islands”;
  - (b) for “not a national of an EEA State” there is substituted “not a British citizen”.

- (2) In Regulation 21(2), for “not being a national of an EEA State” there is substituted “not being a British citizen”.
- (3) In Regulation 21(4) –
  - (a) for “an EEA State” (on the first occasion it occurs) there is substituted “a country forming part of the British Islands”;
  - (b) for “an EEA State” (on the second occasion it occurs) there is substituted “that country”.
- (4) In Regulation 21(5) –
  - (a) for “an EEA State” (on the first occasion it occurs) there is substituted “a country forming part of the British Islands”;
  - (b) for “an EEA State” (on the second occasion it occurs) there is substituted “that country”.
- (5) In Regulation 21(10) –
  - (a) in sub-paragraph (a) –
    - (i) for “an EEA State” there is substituted “a country forming part of the British Islands”;
    - (ii) for “that State or country” there is substituted “that country”;
  - (b) in sub-paragraph (b) –
    - (i) for “an EEA State” there is substituted “a country forming part of the British Islands”;
    - (ii) for “that State or country” there is substituted “that country”;
  - (c) in sub-paragraph (c) –
    - (i) for “an EEA State” there is substituted “a country forming part of the British Islands”;
    - (ii) for “that State or country” there is substituted “that country”;
  - (d) in sub-paragraph (d) –
    - (i) “EEA State or” is deleted,
    - (ii) at the end there is inserted “(which includes, in the case of a country forming part of the British Islands, a British citizen).”.

#### **4 Regulation 22 amended (duration of copyright in foreign sound recordings – Article 26)**

In Regulation 22, for “not a national of an EEA State” there is substituted “not a British citizen”.

#### **5 Regulation 23 amended (duration of copyright in repeat broadcasts – Article 28)**

In Regulation 23(2), for “not a national of an EEA State” there is substituted “not a British citizen”.

## **6 Regulation 28 amended (rights of copyright owner in foreign sound recording – Articles 34, 35 and 41)**

- (1) In Regulation 28(2) –
  - (a) in sub-paragraph (a), for “Guernsey, the Isle of Man, a WPPT country or a Rome Convention country” there is substituted “the United Kingdom, Guernsey, the Isle of Man or any other WPPT country or Rome Convention country”;
  - (b) in sub-paragraph (b), for “Guernsey, the Isle of Man, a WPPT country or a Rome Convention country” there is substituted “the United Kingdom, Guernsey, the Isle of Man or any other WPPT country or Rome Convention country”.
- (2) In Regulation 28(3) –
  - (a) in sub-paragraph (a), for “Guernsey, the Isle of Man or a Rome Convention country” there is substituted “the United Kingdom, Guernsey, the Isle of Man or any other Rome Convention country”;
  - (b) in sub-paragraph (b), for “Guernsey, the Isle of Man or a Rome Convention country” there is substituted “the United Kingdom, Guernsey, the Isle of Man or any other Rome Convention country”.

## **7 Regulation 46 amended (offences: foreign sound recording – Articles 34, 35 and 41)**

- (1) In Regulation 46(2) –
  - (a) in sub-paragraph (a), for “Guernsey, the Isle of Man, a WPPT country or a Rome Convention country” there is substituted “the United Kingdom, Guernsey, the Isle of Man or any other WPPT country or Rome Convention country”;
  - (b) in sub-paragraph (b), for “Guernsey, the Isle of Man, a WPPT country or a Rome Convention country” there is substituted “the United Kingdom, Guernsey, the Isle of Man or any other WPPT country or Rome Convention country”.
- (2) In Regulation 46(3) –
  - (a) in sub-paragraph (a), for “Guernsey, the Isle of Man or a Rome Convention country” there is substituted “the United Kingdom, Guernsey, the Isle of Man or any other Rome Convention country”;
  - (b) in sub-paragraph (b), for “Guernsey, the Isle of Man or a Rome Convention country” there is substituted “the United Kingdom, Guernsey, the Isle of Man or any other Rome Convention country”.

## **8 Citation, commencement and transitional provision**

- (1) These Regulations may be cited as the Intellectual Property (Unregistered Rights) (Application, Transitional Provisions and Savings) (Amendment) (Jersey) Regulations 201-.
- (2) These Regulations come into force on such day or days, and time or times, as the Minister for External Relations may by Order appoint.
- (3) Paragraph (4) –

- (a) applies if any provision of Regulation 6 or 7 of these Regulations comes into force at a time before the commencement of Regulation 2(1) of these Regulations; and
  - (b) ceases to apply on the commencement of Regulation 2(1) of these Regulations.
- (4) In Regulation 20(1) of the Intellectual Property (Unregistered Rights) (Application, Transitional Provisions and Savings) (Jersey) Regulations 2012, after “construed as if” there is inserted “the United Kingdom,”.

## ENDNOTES

### Table of Endnote References

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<i>1</i>	<i>chapter 05.350</i>
<i>2</i>	<i>chapter 17.245</i>
<i>3</i>	<i>chapter 05.350.10</i>