



# Copyright, Designs and Patents Act 1988

## 1988 CHAPTER 48

### PART III

#### DESIGN RIGHT

#### CHAPTER V

#### MISCELLANEOUS AND GENERAL

#### *Miscellaneous*

#### **253 Remedy for groundless threats of infringement proceedings.**

- (1) Where a person threatens another person with proceedings for infringement of design right, a person aggrieved by the threats may bring an action against him claiming—
  - (a) a declaration to the effect that the threats are unjustifiable;
  - (b) an injunction against the continuance of the threats;
  - (c) damages in respect of any loss which he has sustained by the threats.
- (2) If the plaintiff proves that the threats were made and that he is a person aggrieved by them, he is entitled to the relief claimed unless the defendant shows that the acts in respect of which proceedings were threatened did constitute, or if done would have constituted, an infringement of the design right concerned.
- (3) Proceedings may not be brought under this section in respect of a threat to bring proceedings for an infringement alleged to consist of making or importing anything.
- (4) Mere notification that a design is protected by design right does not constitute a threat of proceedings for the purposes of this section.

*Status: Point in time view as at 10/04/2016.*

*Changes to legislation: There are currently no known outstanding effects for the Copyright, Designs and Patents Act 1988, Chapter V. (See end of Document for details)*

## **254 Licensee under licence of right not to claim connection with design right owner.**

- (1) A person who has a licence in respect of a design by virtue of section 237 or 238 (licences of right) shall not, without the consent of the design right owner—
  - (a) apply to goods which he is marketing, or proposes to market, in reliance on that licence a trade description indicating that he is the licensee of the design right owner, or
  - (b) use any such trade description in an advertisement in relation to such goods.
- (2) A contravention of subsection (1) is actionable by the design right owner.
- (3) In this section “trade description”, the reference to applying a trade description to goods and “advertisement” have the same meaning as in the <sup>M1</sup>Trade Descriptions Act 1968.

### **Marginal Citations**

**M1** 1968 c. 29.

### *Extent of operation of this Part*

## **255 Countries to which this Part extends.**

- (1) This Part extends to England and Wales, Scotland and Northern Ireland.
- (2) Her Majesty may by Order in Council direct that this Part shall extend, subject to such exceptions and modifications as may be specified in the Order, to—
  - (a) any of the Channel Islands,
  - (b) the Isle of Man, or
  - (c) any colony.
- (3) That power includes power to extend, subject to such exceptions and modifications as may be specified in the Order, any Order in Council made under section 221 (further provision as to qualification for design right protection) or section 256 (countries enjoying reciprocal protection).
- (4) The legislature of a country to which this Part has been extended may modify or add to the provisions of this Part, in their operation as part of the law of that country, as the legislature may consider necessary to adapt the provisions to the circumstances of that country; but not so as to deny design right protection in a case where it would otherwise exist.
- (5) Where a country to which this Part extends ceases to be a colony of the United Kingdom, it shall continue to be treated as such a country for the purposes of this Part until—
  - (a) an Order in Council is made under section 256 designating it as a country enjoying reciprocal protection, or
  - (b) an Order in Council is made declaring that it shall cease to be so treated by reason of the fact that the provisions of this Part as part of the law of that country have been amended or repealed.
- (6) A statutory instrument containing an Order in Council under subsection (5)(b) shall be subject to annulment in pursuance of a resolution of either House of Parliament.

*Status: Point in time view as at 10/04/2016.*

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## **256 Countries enjoying reciprocal protection.**

- (1) Her Majesty may, if it appears to Her that the law of a country provides adequate protection for British designs, by Order in Council designate that country as one enjoying reciprocal protection under this Part.
- (2) If the law of a country provides adequate protection only for certain classes of British design, or only for designs applied to certain classes of article, any Order designating that country shall contain provision limiting, to a corresponding extent, the protection afforded by this Part in relation to designs connected with that country.
- (3) An Order under this section shall be subject to annulment in pursuance of a resolution of either House of Parliament.

## **257 Territorial waters and the continental shelf.**

- (1) For the purposes of this Part the territorial waters of the United Kingdom shall be treated as part of the United Kingdom.
- (2) This Part applies to things done in the United Kingdom sector of the continental shelf on a structure or vessel which is present there for purposes directly connected with the exploration of the sea bed or subsoil or the exploitation of their natural resources as it applies to things done in the United Kingdom.
- (3) The United Kingdom sector of the continental shelf means the areas designated by order under section 1(7) of the <sup>M2</sup>Continental Shelf Act 1964.

### **Marginal Citations**

**M2** 1964 c. 29.

### *Interpretation*

## **258 Construction of references to design right owner.**

- (1) Where different persons are (whether in consequence of a partial assignment or otherwise) entitled to different aspects of design right in a work, the design right owner for any purpose of this Part is the person who is entitled to the right in the respect relevant for that purpose.
- (2) Where design right (or any aspect of design right) is owned by more than one person jointly, references in this Part to the design right owner are to all the owners, so that, in particular, any requirement of the licence of the design right owner requires the licence of all of them.

## **259 Joint designs.**

- (1) In this Part a “joint design” means a design produced by the collaboration of two or more designers in which the contribution of each is not distinct from that of the other or others.
- (2) References in this Part to the designer of a design shall, except as otherwise provided, be construed in relation to a joint design as references to all the designers of the design.

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## **260 Application of provisions to articles in kit form.**

- (1) The provisions of this Part apply in relation to a kit, that is, a complete or substantially complete set of components intended to be assembled into an article, as they apply in relation to the assembled article.
- (2) Subsection (1) does not affect the question whether design right subsists in any aspect of the design of the components of a kit as opposed to the design of the assembled article.

## **261 Requirement of signature: application in relation to body corporate.**

The requirement in the following provisions that an instrument be signed by or on behalf of a person is also satisfied in the case of a body corporate by the affixing of its seal—

- section 222(3) (assignment of design right),
- section 223(1) (assignment of future design right),
- section 225(1) (grant of exclusive licence).

## **262 Adaptation of expressions in relation to Scotland.**

In the application of this Part to Scotland—

- “account of profits” means accounting and payment of profits;
- “accounts” means count, reckoning and payment;
- “assignment” means assignation;
- “costs” means expenses;
- “defendant” means defender;
- “delivery up” means delivery;
- “injunction” means interdict;
- “interlocutory relief” means interim remedy; and
- “plaintiff” means pursuer.

## **263 Minor definitions.**

- (1) In this Part—

“British design” means a design which qualifies for design right protection by reason of a connection with the United Kingdom of the designer or the person by whom <sup>F1</sup>... the designer is employed;

“business” includes a trade or profession;

<sup>F2</sup>  
...

“the comptroller” means the Comptroller-General of Patents, Designs and Trade Marks;

“computer-generated”, in relation to a design, means that the design is generated by computer in circumstances such that there is no human designer,

“country” includes any territory;

“the Crown” includes the Crown in right of Her Majesty’s Government in Northern Ireland [<sup>F3</sup>and the Crown in right of the Scottish Administration]<sup>F4</sup>and the Crown in right of the Welsh Assembly Government];

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“design document” means any record of a design, whether in the form of a drawing, a written description, a photograph, data stored in a computer or otherwise;

“employee”, “employment” and “employer” refer to employment under a contract of service or of apprenticeship;

“government department” includes a Northern Ireland department [<sup>F5</sup>and any part of the Scottish Administration][<sup>F6</sup>and any part of the Welsh Assembly Government].

- (2) References in this Part to “marketing”, in relation to an article, are to its being sold or let for hire, or offered or exposed for sale or hire, in the course of a business, and related expressions shall be construed accordingly; but no account shall be taken for the purposes of this Part of marketing which is merely colourable and not intended to satisfy the reasonable requirements of the public.
- (3) References in this Part to an act being done in relation to an article for “commercial purposes” are to its being done with a view to the article in question being sold or hired in the course of a business.

#### Textual Amendments

- F1** Words in s. 263(1) omitted (1.10.2014) by virtue of [Intellectual Property Act 2014 \(c. 18\)](#), **ss. 2(2)(i), 24(1)** (with s. 2(3)); [S.I. 2014/2330](#), art. 3, Sch.
- F2** Words in s. 263(1) omitted (1.10.2014) by virtue of [Intellectual Property Act 2014 \(c. 18\)](#), **ss. 2(2)(j), 24(1)** (with s. 2(3)); [S.I. 2014/2330](#), art. 3, Sch.
- F3** Words in definition of “the Crown” in s. 263(1) inserted (1.7.1999) by [S.I. 1999/1820](#), arts. 1(2), 4, **Sch. 2 Pt. I para. 93(4)(a)**; [S.I. 1998/3178](#), **art. 3**
- F4** S. 263(1): words in definition of “the Crown” inserted by [Government of Wales Act 2006 \(c. 32\)](#), s. 160(1), **Sch. 10 para. 31(2)** (with [Sch. 11 para. 22](#)), the amending provision coming into force immediately after “the 2007 election” (held on 3.5.2007) subject to s. 161(4)(5) of the amending Act, which provides for certain provisions to come into force for specified purposes immediately after the end of “the initial period” (which ended with the day of the first appointment of a First Minister on 25.5.2007) - see ss. 46, 161(1)(4)(5) of the amending Act.
- F5** Words in definition of “government department” in s. 263(1) inserted (1.7.1999) by [S.I. 1999/1820](#), arts. 1(2), 4, **Sch. 2 Pt. I para. 93(4)(b)**; [S.I. 1998/3178](#), **art. 3**
- F6** S. 263(1): words in definition of “government department” inserted by [Government of Wales Act 2006 \(c. 32\)](#), s. 160(1), **Sch. 10 para. 31(3)** (with [Sch. 11 para. 22](#)), the amending provision coming into force immediately after “the 2007 election” (held on 3.5.2007) subject to s. 161(4)(5) of the amending Act, which provides for certain provisions to come into force for specified purposes immediately after the end of “the initial period” (which ended with the day of the first appointment of a First Minister on 25.5.2007) - see ss. 46, 161(1)(4)(5) of the amending Act.

## 264 Index of defined expressions.

The following Table shows provisions defining or otherwise explaining expressions used in this Part (other than provisions defining or explaining an expression used only in the same section)—

account of profits and accounts (in Scotland)	section 262
assignment (in Scotland)	section 262

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British designs	section 263(1)
business	section 263(1)
commercial purposes	section 263(3)
F7	F7
. . .	. . .
the comptroller	section 263(1)
computer-generated	section 263(1)
costs (in Scotland)	section 262
country	section 263(1)
the Crown	section 263(1)
Crown use	sections 240(5) and 244(2)
defendant (in Scotland)	section 262
delivery up (in Scotland)	section 262
design	section 213(2)
design document	section 263(1)
designer	sections 214 and 259(2)
design right	section 213(1)
design right owner	sections 234(2) and 258
employee, employment and employer	section 263(1)
exclusive licence	section 225(1)
government department	section 263(1)
government department concerned (in relation to Crown use)	section 240(5)
infringing article	section 228
injunction (in Scotland)	section 262
interlocutory relief (in Scotland)	section 262
joint design	section 259(1)
licence (of the design right owner)	sections 222(4), 223(3) and 258
making articles to a design	section 226(2)
marketing (and related expressions)	section 263(2)
original	section 213(4)
plaintiff (in Scotland)	section 262
F8	F8
. . .	. . .
qualifying person	sections 217(1) and (2)
signed	section 261

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**Textual Amendments**

- F7** Words in s. 264 omitted (1.10.2014) by virtue of [Intellectual Property Act 2014 \(c. 18\)](#), **ss. 2(2)(k)**, 24(1) (with s. 2(3)); S.I. 2014/2330, art. 3, Sch.
- F8** Words in s. 264 omitted (1.10.2014) by virtue of [Intellectual Property Act 2014 \(c. 18\)](#), **ss. 3(5)**, 24(1) (with s. 3(6)); S.I. 2014/2330, art. 3, Sch.

**Status:**

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**Changes to legislation:**

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