



# Intellectual Property Act 2014

## 2014 CHAPTER 18

### PART 1 **U.K.**

#### DESIGN

##### *Registered designs*

VALID FROM 01/10/2014

#### **6 Ownership of design and application for registration **U.K.****

- (1) In section 2 of the Registered Designs Act 1949 (ownership of registered designs)—
  - (a) omit subsection (1A) (which provides for the commissioner of a design to be the original proprietor), and
  - (b) in subsection (1B), omit “, in a case not falling within subsection (1A),”.
- (2) In section 3 of that Act (application for registration), omit subsection (2) (requirement for application to be made by person claiming to be proprietor).

VALID FROM 01/10/2014

#### **7 Right of prior use **U.K.****

- (1) After section 7A of the Registered Designs Act 1949 insert—

##### **“7B Right of prior use**

- (1) A person who, before the application date, used a registered design in good faith or made serious and effective preparations to do so may continue to use

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the design for the purposes for which, before that date, the person had used it or made the preparations to use it.

- (2) In subsection (1), the “application date”, in relation to a registered design, means—
- (a) the date on which an application for the registration was made under section 3, or
  - (b) where an application for the registration was treated as having been made by virtue of section 14(2), the date on which it was treated as having been so made.
- (3) Subsection (1) does not apply if the design which the person used, or made preparations to use, was copied from the design which was subsequently registered.
- (4) The right conferred on a person by subsection (1) does not include a right to licence another person to use the design.
- (5) Nor may the person on whom the right under subsection (1) is conferred assign the right, or transmit it on death (or in the case of a body corporate on its dissolution), unless—
- (a) the design was used, or the preparations for its use were made, in the course of a business, and
  - (b) the right is assigned or transmitted with the part of the business in which the design was used or the preparations for its use were made.”

- (2) This section applies only to designs registered under the Registered Designs Act 1949 after the commencement of this section.

VALID FROM 01/10/2014

## 8 Accession to the Hague Agreement **U.K.**

- (1) After section 15 of the Registered Designs Act 1949 insert—

### “15ZA Accession to the Hague Agreement

- (1) The Secretary of State may by order make provision for giving effect in the United Kingdom to the provisions of the Geneva Act of the Hague Agreement Concerning the International Registration of Industrial Designs adopted by the Diplomatic Conference on 2 July 1999.
- (2) An order under this section may, in particular, make provision about—
  - (a) the making of applications for international registrations at the Patent Office;
  - (b) the procedures to be followed where an international registration designates the United Kingdom;
  - (c) the effect of an international registration which designates the United Kingdom;
  - (d) the communication of information to the International Bureau;

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- (e) the payment of fees.
- (3) An order under this section may—
  - (a) amend this Act;
  - (b) apply specified provisions of this Act with such modifications as may be specified.
- (4) An expression used in subsection (2) and in the Agreement referred to in subsection (1) has the same meaning in that subsection as it has in the Agreement.”
- (2) In section 37 of that Act (rules and orders)—
  - (a) in subsection (3), before “shall be exercisable” insert “ and the power to make an order under section 15ZA ”, and
  - (b) before subsection (5) insert—
    - “(4B) The Secretary of State may not make an order under section 15ZA unless a draft of the statutory instrument containing the order has been laid before, and approved by a resolution of, each House of Parliament.”

VALID FROM 01/10/2014

## 9 The register: changes of ownership and inspection of documents **U.K.**

- (1) In section 19 of the Registered Designs Act 1949 (registration of assignments, etc.), omit subsection (3A) (which, where design right subsists in a registered design, prohibits the registrar from registering an interest unless satisfied that the person who has the interest has a corresponding interest in the design right).
- (2) In section 22 of that Act (the title to which becomes “ Inspection of registered designs and associated documents ”), in subsection (1), after paragraph (a) insert “and
  - (aa) every document kept at the Patent Office in connection with that design.”
- (3) In that subsection, for “subsection (4)” substitute “ subsections (4) to (7) ”.
- (4) After subsection (4) of that section insert—
  - “(5) For the purposes of subsection (1), a document is not to be regarded as open for inspection unless (in addition to being open for inspection in hard copy) it is made available by electronic transmission in such a way that members of the public may access it at a place and time individually chosen by them.”
- (5) After subsection (5) insert—
  - “(6) The Secretary of State may by rules specify cases or circumstances in which a document kept at the Patent Office in connection with a registered design may not be inspected.
  - (7) Rules made under subsection (6) may confer a discretion on the registrar.”

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- (6) In section 37 of that Act (rules and orders), in subsection (2), after “section 15” insert “ or 22(6) ”.

## 10 Legal proceedings and appeals **U.K.**

- (1) In section 24B of the Registered Designs Act 1949 (exemption of innocent infringer from liability), in subsection (1), omit “, and no order shall be made for an account of profits,”.
- (2) After section 27 of that Act insert—

### “27A Appeals from decisions of registrar

- (1) An appeal against a decision of the registrar under this Act may be made to—
- (a) a person appointed by the Lord Chancellor (an “appointed person”), or
  - (b) the court.
- (2) On an appeal under this section to an appointed person, the appointed person may refer the appeal to the court if—
- (a) it appears to the appointed person that a point of general legal importance is involved,
  - (b) the registrar requests that the appeal be so referred, or
  - (c) such a request is made by any party to the proceedings before the registrar in which the decision appealed against was made.
- (3) Before referring an appeal to the court under subsection (2), the appointed person must give the appellant and any other party to the appeal an opportunity to make representations as to whether it should be so referred.
- (4) Where, on an appeal under this section to an appointed person, the appointed person does not refer the appeal to the court—
- (a) the appointed person must hear and determine the appeal, and
  - (b) the appointed person's decision is final.
- (5) Sections 30 and 31 (costs, evidence) apply to proceedings before an appointed person as they apply to proceedings before the registrar.
- (6) In the application of this section to England and Wales, “the court” means the High Court.

### 27B Persons appointed to hear and determine appeals

- (1) A person is not eligible for appointment under section 27A(1)(a) unless the person—
- (a) satisfies the judicial-appointment eligibility condition on a 5-year basis,
  - (b) is an advocate or solicitor in Scotland of at least 5 years' standing,
  - (c) is a member of the Bar of Northern Ireland or solicitor of the Court of Judicature of Northern Ireland of at least 5 years' standing, or
  - (d) has held judicial office.

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- (2) An appointed person must hold and vacate office in accordance with his terms of appointment, subject to subsections (3) to (5).
  - (3) An appointed person is to be paid such remuneration (whether by way of salary or fees) and such allowances as the Secretary of State may with the approval of the Treasury decide.
  - (4) An appointed person may resign office by notice in writing to the Lord Chancellor.
  - (5) The Lord Chancellor may by notice in writing remove an appointed person (“A”) from office if—
    - (a) A has become bankrupt or made an arrangement with A's creditors or, in Scotland, A's estate has been sequestrated or A has executed a trust deed for A's creditors or entered into a composition contract,
    - (b) A is incapacitated by physical or mental illness, or
    - (c) A is, in the opinion of the Lord Chancellor, otherwise unable or unfit to perform A's duties as an appointed person.
  - (6) Before exercising a power under section 27A or this section, the Lord Chancellor must consult the Secretary of State.
  - (7) The Lord Chancellor may remove a person from office under subsection (5) only with the concurrence of the appropriate senior judge.
  - (8) The appropriate senior judge is the Lord Chief Justice of England and Wales, unless—
    - (a) the person to be removed exercises functions wholly or mainly in Scotland, in which case it is the Lord President of the Court of Session, or
    - (b) the person to be removed exercises functions wholly or mainly in Northern Ireland, in which case it is the Lord Chief Justice of Northern Ireland.”
- (3) In section 27(1)(a) of that Act, after “the High Court or” insert “ (subject to section 27A(6)) ”.
  - (4) Section 28 of that Act (the Appeal Tribunal) is repealed.
  - (5) In section 37(3) of that Act (provision as to rules and orders)—
    - (a) omit “or on the Appeal Tribunal”, and
    - (b) omit the words from “; and the Statutory Instruments Act 1946” to the end.
  - (6) In section 44(1) of that Act (interpretation), omit the definition of “Appeal Tribunal”.
  - (7) In section 249 of the Copyright, Designs and Patents Act 1988 (right of appeal as to terms of licence of right)—
    - (a) in subsection (1), for the words from “the Appeal Tribunal” to the end substitute “ a person appointed under section 27A of the Registered Designs Act 1949 ”, and
    - (b) omit subsection (2).
  - (8) In section 251(4) of that Act (right of appeal against decisions of comptroller relating to design right)—

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- (a) before “the High Court” insert “—  
(a)”,  
and
  - (b) at the end insert “, or  
(b) a person appointed under section 27A of the Registered Designs Act 1949”.
- (9) In the House of Commons Disqualification Act 1975, in Schedule 1 (offices disqualifying for membership), in Part 3 (other disqualifying offices), at the appropriate place insert— “ Person appointed under section 27A of the Registered Designs Act 1949 to hear and determine appeals against decisions of the registrar under that Act ”.
- (10) In the Constitutional Reform Act 2005, in Schedule 7 (protected functions of the Lord Chancellor), in paragraph 4, at the appropriate place insert— “ *Registered Designs Act 1949 (c.88) Sections 27A and 27B.* ”
- (11) Section 143 of the Tribunals, Courts and Enforcement Act 2007 (which makes provision about appeals in relation to design rights) is repealed.

#### Commencement Information

- II** [S. 10\(2\)](#) in force at 15.7.2014 for specified purposes by [S.I. 2014/1715](#), [art. 3](#)

VALID FROM 01/10/2014

#### **11** Opinions service **U.K.**

- (1) Before section 29 of the Registered Designs Act 1949 (and the preceding cross-heading) insert—

*“Opinions service*

##### **28A Opinions on designs**

- (1) The Secretary of State may by regulations make provision about the making of requests to the registrar for an opinion on specified matters relating to—
  - (a) designs registered under this Act;
  - (b) designs of such other description as may be specified.
- (2) The regulations must require the registrar to give an opinion in response to a request made under the regulations, except—
  - (a) in specified cases or circumstances, or
  - (b) where for any reason the registrar considers it inappropriate in all the circumstances to do so.
- (3) The regulations may provide that a request made under the regulations must be accompanied by—
  - (a) a fee of a specified amount;
  - (b) specified information.

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- (4) The regulations must provide that an opinion given by the registrar under the regulations is not binding for any purposes.
  - (5) The regulations must provide that neither the registrar nor any examiner or other officer of the Patent Office is to incur any liability by reason of or in connection with—
    - (a) any opinion given under the regulations, or
    - (b) any examination or investigation undertaken for the purpose of giving such an opinion.
  - (6) An opinion given by the registrar under the regulations is not to be treated as a decision of the registrar for the purposes of section 27A.
  - (7) But the regulations must provide for an appeal relating to an opinion given under the regulations to be made to a person appointed under section 27A; and the regulations may make further provision in relation to such appeals.
  - (8) The regulations may confer discretion on the registrar.
  - (9) Regulations under this section—
    - (a) may make different provision for different purposes;
    - (b) may include consequential, incidental, supplementary, transitional, transitory or saving provision.
  - (10) In this section, “specified” means specified in regulations under this section.”
- (2) In Chapter 4 of Part 3 of the Copyright, Designs and Patents Act 1988 (jurisdiction of the comptroller etc.), after section 249 insert—

#### **“249A Opinions service**

The descriptions of designs which may be specified in regulations under subsection (1)(b) of section 28A of the Registered Designs Act 1949 (requests to the comptroller for opinions on designs) include, in particular—

- (a) designs in which design right subsists in accordance with this Part, and
  - (b) designs in relation to which there is a question whether design right so subsists.”
- (3) In section 37 of the Registered Designs Act 1949 (the title to which becomes “Provisions as to rules, regulations and orders ”)—
- (a) in subsection (3), after “an order under section 15ZA” (inserted by section 8(2)(a)), insert “ and the power to make regulations under section 28A ”,
  - (b) in subsection (4), after “under this Act” insert “ or regulations under section 28A ”, and
  - (c) after subsection (4) insert—
- “(4A) Subsection (4) does not apply to the first regulations to be made under section 28A, but the Secretary of State may not make those regulations unless a draft of the statutory instrument containing them

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has been laid before, and approved by a resolution of, each House of Parliament.”

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## 12 Use of directions by the registrar **U.K.**

(1) After section 31 of the Registered Designs Act 1949 insert—

### “31A Power to require use of forms

(1) The registrar may require the use of such forms as the registrar may direct for—

- (a) an application for the registration of a design;
- (b) representations or specimens of designs or other documents which may be filed at the Patent Office.

(2) The forms, and any directions by the registrar about their use, are to be published in the prescribed manner.”

(2) In section 3(1) of that Act (application for registration), omit “shall be made in the prescribed form and”.

(3) In section 36(1A) of that Act (matters which may be covered in rules), for paragraph (a) substitute—

“(a) requiring the furnishing of copies of such representations or specimens of designs or other documents as may be filed at the Patent Office;”.

(4) In section 39(1) of that Act (hours of business and excluded days)—

- (a) for “Rules made by the Secretary of State under this Act may specify” substitute “ The registrar may give directions specifying ”, and
- (b) for “and may specify” substitute “ and specifying ”.

(5) Despite the repeal made by subsection (2), any rules made in reliance on section 3(1) of that Act which are in force immediately before the commencement of that repeal continue in force until such time as directions about forms of the kind which had been prescribed by the rules take effect.

(6) Despite the amendment made by subsection (3), any rules made in reliance on section 36(1A)(a) of that Act which are in force immediately before the commencement of that amendment continue in force until such time as directions about forms of the kind which had been prescribed by the rules take effect.

(7) In subsections (5) and (6), “directions” means directions given under section 31A of that Act (as inserted by subsection (1)).

(8) Despite the amendment made by subsection (4), any rules made in reliance on section 39(1) of that Act which are in force immediately before the commencement of that amendment continue in force until such time as directions about the matter specified by the rules take effect.



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(9) In subsection (8), “directions” means directions given under section 39(1) of that Act (as amended by subsection (4)).

VALID FROM 01/10/2014

### 13 Offence of unauthorised copying etc. of design in course of business **U.K.**

After section 35 of the Registered Designs Act 1949 insert—

#### “35ZA Offence of unauthorised copying etc. of design in course of business

- (1) A person commits an offence if—
  - (a) in the course of a business, the person intentionally copies a registered design so as to make a product—
    - (i) exactly to that design, or
    - (ii) with features that differ only in immaterial details from that design, and
  - (b) the person does so—
    - (i) knowing, or having reason to believe, that the design is a registered design, and
    - (ii) without the consent of the registered proprietor of the design.
- (2) Subsection (3) applies in relation to a product where a registered design has been intentionally copied so as to make the product—
  - (a) exactly to the design, or
  - (b) with features that differ only in immaterial details from the design.
- (3) A person commits an offence if—
  - (a) in the course of a business, the person offers, puts on the market, imports, exports or uses the product, or stocks it for one or more of those purposes,
  - (b) the person does so without the consent of the registered proprietor of the design, and
  - (c) the person does so knowing, or having reason to believe, that—
    - (i) a design has been intentionally copied without the consent of the registered proprietor so as to make the product exactly to the design or with features that differ only in immaterial details from the design, and
    - (ii) the design is a registered design.
- (4) It is a defence for a person charged with an offence under this section to show that the person reasonably believed that the registration of the design was invalid.
- (5) It is also a defence for a person charged with an offence under this section to show that the person—
  - (a) did not infringe the right in the design, or

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(b) reasonably believed that the person did not do so.

- (6) The reference in subsection (3) to using a product in the course of a business does not include a reference to using it for a purpose which is merely incidental to the carrying on of the business.
- (7) In this section “registered design” includes a registered Community design; and a reference to the registered proprietor is, in the case of a registered Community design, to be read as a reference to the holder.
- (8) A person guilty of an offence under this section is liable—
- (a) on conviction on indictment, to imprisonment for a term not exceeding ten years or to a fine or to both;
  - (b) on summary conviction in England and Wales or Northern Ireland, to imprisonment for a term not exceeding six months or to a fine not exceeding the statutory maximum or to both;
  - (c) on summary conviction in Scotland, to imprisonment for a term not exceeding 12 months or to a fine not exceeding the statutory maximum or to both.

#### **35ZB Section 35ZA: enforcement**

- (1) The following provisions of the Trade Descriptions Act 1968 (which provide for the enforcement of that Act by local weights and measures authorities or the relevant Northern Ireland Department) apply as if section 35ZA were a provision of that Act—
- (a) section 27 (power to make test purchases);
  - (b) section 28 (power to enter premises and inspect and seize goods and documents);
  - (c) section 29 (obstruction of authorised officers);
  - (d) section 33 (compensation for loss etc. of seized goods).
- (2) Any enactment which authorises the disclosure of information for the purpose of facilitating the enforcement of the Trade Descriptions Act 1968 applies—
- (a) as if section 35ZA were a provision of that Act, and
  - (b) as if the functions of any person in relation to the enforcement of that section were functions under that Act.
- (3) Nothing in this section is to be construed as authorising a local weights and measures authority to bring proceedings in Scotland.

#### **35ZC Section 35ZA: forfeiture in England and Wales or Northern Ireland**

- (1) In England and Wales or Northern Ireland, a person who, in connection with the investigation or prosecution of an offence under section 35ZA, has come into the possession of relevant products or articles may apply under this section for an order for the forfeiture of the products or articles.
- (2) “Relevant product” means a product which is made exactly to a registered design, or with features that differ only in immaterial details from a registered design, by copying that design intentionally.

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- (3) “Relevant article” means an article which is specifically designed or adapted for making copies of a registered design intentionally.
- (4) An application under this section may be made—
  - (a) where proceedings have been brought in any court for an offence under section 35ZA relating to some or all of the products or articles, to that court;
  - (b) where no application for the forfeiture of the products or articles has been made under paragraph (a), by way of complaint to a magistrates' court.
- (5) On an application under this section, the court may make an order for the forfeiture of products or articles only if it is satisfied that an offence under section 35ZA has been committed in relation to the products or articles.
- (6) A court may infer for the purposes of this section that such an offence has been committed in relation to any products or articles if it is satisfied that such an offence has been committed in relation to products or articles which are representations of them (whether by reason of being of the same design or part of the same consignment or batch or otherwise).
- (7) Any person aggrieved by an order made under this section by a magistrates' court, or by a decision of such a court not to make such an order, may appeal against that order or decision—
  - (a) in England and Wales, to the Crown Court;
  - (b) in Northern Ireland, to the county court.
- (8) An order so made may contain such provision as appears to the court to be appropriate for delaying the coming into force of the order pending the making and determination of any appeal (including any application under section 111 of the Magistrates' Courts Act 1980 or Article 146 of the Magistrates' Courts (Northern Ireland) Order 1981).
- (9) Subject to subsection (10), any products or articles forfeited under this section are to be destroyed in accordance with such directions as the court may give.
- (10) On making an order under this section, the court may, if it considers it appropriate to do so, direct that the products or articles to which the order relates shall (instead of being destroyed) be released to such person and on such conditions as the court may specify.

#### **35ZD Section 35ZA: forfeiture in Scotland**

- (1) In Scotland, the court may make an order for the forfeiture of any relevant products or articles (as defined by section 35ZC).
- (2) An order under this section may be made—
  - (a) on an application by the procurator fiscal made in the manner specified in section 134 of the Criminal Procedure (Scotland) Act 1995, or
  - (b) where a person is convicted of an offence under section 35ZA, in addition to any other penalty which the court may impose.

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- (3) On an application under subsection (2)(a), the court may make an order for the forfeiture of relevant products or articles only if it is satisfied that an offence under section 35ZA has been committed in relation to the relevant products or articles.
- (4) The court may infer for the purposes of this section that such an offence has been committed in relation to any relevant products or articles [<sup>F1</sup>if it is satisfied that such an offence has been committed in relation to products or articles] which are representative of them (whether by reason of being of the same design or part of the same consignment or batch or otherwise).
- (5) The procurator fiscal making the application under subsection (2)(a) must serve on any person appearing to the procurator fiscal to be the owner of, or otherwise have an interest in, the products or articles to which [<sup>F2</sup>the application relates a copy of the application, together with a notice giving the person the opportunity] to appear at the hearing of the application to show cause why the products or articles should not be forfeited.
- (6) Service under subsection (5) must be carried out, and such service may be proved, in the manner specified for citation of an accused in summary proceedings under the Criminal Procedure (Scotland) Act 1995.
- (7) Any person upon whom notice is served under subsection (5) and any other person claiming to be the owner of, or otherwise have an interest in, products or articles to which an application under this section relates is entitled to appear at the hearing of the application to show cause why the products or articles should not be forfeited.
- (8) The court must not make an order following an application under subsection (2)(a)—
  - (a) if any person on whom notice is served under subsection (5) does not appear, unless service of the notice on that person is proved, or
  - (b) if no notice under subsection (5) has been served, unless the court is satisfied that in the circumstances it was reasonable not to serve such notice.
- (9) Where an order for the forfeiture of any products or articles is made following an application under subsection (2)(a), any person who appeared, or was entitled to appear, to show cause why goods, material or articles should not be forfeited may, within 21 days of making the order, appeal to the High Court of Justiciary by bill of suspension.
- (10) Section 182(5)(a) to (e) of the Criminal Procedure (Scotland) Act 1995 applies to an appeal under subsection (9) as it applies to a stated case under Part 2 of that Act.
- (11) An order following an application under subsection (2)(a) does not take effect—
  - (a) until the end of the period of 21 days beginning with the day after the day on which the order is made, or
  - (b) if an appeal is made under subsection (9) within that period, until the appeal is dismissed or abandoned.
- (12) An order under subsection (2)(b) does not take effect—

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- (a) until the end of the period within which an appeal against the order could be brought under the Criminal Procedure (Scotland) Act 1995, or
  - (b) if an appeal is made within that period, until the appeal is determined or abandoned.
- (13) Subject to subsection (14), products or articles forfeited under this section must be destroyed in accordance with such directions as the court may give.
- (14) On making an order under this section, the court may, if it considers it appropriate to do so, direct that the products or articles to which the order relates shall (instead of being destroyed) be released, to such person and on such conditions as the court may specify.
- (15) In this section, “the court” means—
- (a) in relation to an order made on an application under subsection (2)(a), the sheriff;
  - (b) in relation to an order made under subsection (2)(b), the court which imposed the penalty.”

#### Textual Amendments

- F1** Words in s. 13 inserted (29.9.2014) by [The Intellectual Property Act 2014 \(Amendment\) Regulations 2014 \(S.I. 2014/2329\)](#), regs. 1, **3(1)**
- F2** Words in s. 13 substituted (29.9.2014) by [The Intellectual Property Act 2014 \(Amendment\) Regulations 2014 \(S.I. 2014/2329\)](#), regs. 1, **3(2)**

VALID FROM 01/10/2014

#### 14 Offences committed by partnerships **U.K.**

At the end of section 35A of the Registered Designs Act 1949 (the title to which becomes “Offence by body corporate or partnership: liability of officers or partners”) insert—

- “(3) Proceedings for an offence under this Act alleged to have been committed by a partnership are to be brought against the partnership in the name of the firm and not in that of the partners; but without prejudice to any liability of the partners under subsection (6) or (7).
- (4) The following provisions apply for the purposes of such proceedings as in relation to a body corporate—
- (a) any rules of court relating to the service of documents;
  - (b) in England and Wales, Schedule 3 to the Magistrates' Courts Act 1980;
  - (c) in Northern Ireland, Schedule 4 to the Magistrates' Courts (Northern Ireland) Order 1981.
- (5) A fine imposed on a partnership (other than a Scottish partnership) on its conviction in such proceedings must be paid out of the partnership assets.

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*Status: Point in time view as at 15/07/2014. This version of this cross heading contains provisions that are not valid for this point in time.*

*Changes to legislation: There are currently no known outstanding effects for the Intellectual Property Act 2014, Cross Heading: Registered designs. (See end of Document for details)*

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- (6) Where a partnership (other than a Scottish partnership) is guilty of an offence under this Act, every partner, other than a partner who is proved to have been ignorant of or to have attempted to prevent the commission of the offence, is also guilty of the offence and liable to be proceeded against and punished accordingly.
- (7) Where an offence under this Act committed by a Scottish partnership is proved to have been committed with the consent or connivance of a partner in the partnership, or a person purporting to act in that capacity, he as well as the partnership is guilty of the offence and liable to be proceeded against and punished accordingly.”

**Status:**

Point in time view as at 15/07/2014. This version of this cross heading contains provisions that are not valid for this point in time.

**Changes to legislation:**

There are currently no known outstanding effects for the Intellectual Property Act 2014, Cross Heading: Registered designs.