

INTELLECTUAL PROPERTY ACT 2014

EXPLANATORY NOTES

COMMENTARY

Part 1: DESIGNS

Section 1: Unregistered designs: meaning of “design” and “original”.

9. This section amends the definition of unregistered design right.
10. *Subsection (1)* limits the protection for trivial features of designs, by making sure that protection does not extend to “any aspect” of the shape or configuration of the whole or part of an article. It is expected that this will reduce the tendency to overstate the breadth of unregistered design right and the uncertainty this creates, particularly in relation to actions before the courts.
11. *Subsection (3)*: To be considered “original” an unregistered design should not be “commonplace” in the relevant design field. The meaning of “commonplace” is not set out in the CDPA, and, although case law has helped define it, there remains confusion as to the geographical coverage of the relevant design field. The amendment aims to remove that confusion by specifying that a design must not be “commonplace” in a country mentioned in section 217(3) of the CDPA.
12. *Subsection (4)* ensures that the new definition of “original” will only apply to designs created after the change in the law and will not be applied retrospectively.