



Registered Designs Act 1949

1949 CHAPTER 88 12 13 and 14 Geo 6

Offences

33 Offences under s. 5.

(1) If any person fails to comply with any direction given under section five of this Act or makes or causes to be made an application for the registration of a design in contravention of that section, he shall be guilty of an offence and liable—

- [^{F1}(a) on conviction on indictment to imprisonment for a term not exceeding two years or a fine, or both;
- (b) on summary conviction to imprisonment for a term not exceeding six months or a fine not exceeding the statutory maximum, or both.]

(2) ^{F2}

Textual Amendments

- F1** S. 33(1)(a)(b) substituted by [Copyright, Designs and Patents Act 1988 \(c. 48, SIF 67A\)](#), s. 272, [Sch. 3 para. 22\(2\)\(4\)](#)
- F2** S. 33(2) repealed by [Copyright, Designs and Patents Act 1988 \(c. 48, SIF 67A\)](#), ss. 272, 303(2), [Sch. 3 para. 22\(3\)\(4\)](#), [Sch. 8](#)

34 Falsification of register, etc.

If any person makes or causes to be made a false entry in the register of designs, or a writing falsely purporting to be a copy of an entry in that register, or produces or tenders or causes to be produced or tendered in evidence any such writing, knowing the entry or writing to be false, he [^{F3}shall be guilty of an offence and liable—

- (a) on conviction on indictment to imprisonment for a term not exceeding two years or a fine, or both;
- (b) on summary conviction to imprisonment for a term not exceeding six months or a fine not exceeding the statutory maximum, or both.]

Status: Point in time view as at 01/10/2014.

Changes to legislation: Registered Designs Act 1949, Cross Heading: Offences is up to date with all changes known to be in force on or before 11 June 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)

Textual Amendments

- F3** Words substituted by [Copyright, Designs and Patents Act 1988 \(c. 48, SIF 67A\)](#), s. 272, [Sch. 3 para. 23\(1\)\(2\)](#)

35 Fine for falsely representing a design as registered.

- (1) If any person falsely represents that a design applied to ^{F4}, or incorporated in, any product] sold by him is registered ^{F5} . . . , he shall be liable on summary conviction to ^{F6} a fine not exceeding level 3 on the standard scale]; and for the purposes of this provision a person who sells ^{F4} a product] having stamped, engraved or impressed thereon or otherwise applied thereto the word “registered”, or any other word expressing or implying that the design applied to ^{F4}, or incorporated in, the product] is registered, shall be deemed to represent that the design applied to ^{F4}, or incorporated in, the product] is registered ^{F5}
- (2) If any person, after ^{F7} the right in a registered design] has expired, marks ^{F4} any product] to which the design has been applied ^{F8} or in which it has been incorporated] with the word “registered”, or any word or words implying that there is a ^{F9} subsisting right in the design under this Act], or causes any ^{F4} such product] to be so marked, he shall be liable on summary conviction to ^{F10} a fine not exceeding level 1 on the standard scale]
- ^{F11}(3) For the purposes of this section, the use in the United Kingdom in relation to a design—
- (a) of the word “registered”, or
 - (b) of any other word or symbol importing a reference (express or implied) to registration,
- shall be deemed to be a representation as to registration under this Act unless it is shown that the reference is to registration elsewhere than in the United Kingdom and that the design is in fact so registered.]

Textual Amendments

- F4** Words in s. 35(1)(2) substituted (9.12.2001) by [S.I. 2001/3949](#), reg. 9(1), [Sch. 1 para. 10\(2\)\(a\)\(c\)\(d\)\(3\)\(a\)\(c\)](#) (with transitional provisions in [regs. 10-14](#))
- F5** Words in s. 35(1) repealed (9.12.2001) by [S.I. 2001/3949](#), reg. 9(1), [Sch. 1 para. 10\(2\)\(b\)\(e\)](#), [Sch. 2](#) (with transitional provisions in [regs. 10-14](#))
- F6** Words substituted by [Copyright, Designs and Patents Act 1988 \(c. 48, SIF 67A\)](#), s. 272, [Sch. 3 para. 24\(2\)\(4\)](#)
- F7** Words substituted by [Copyright, Designs and Patents Act 1988 \(c. 48, SIF 67A\)](#), s. 272, [Sch. 3 para. 24\(3\)\(a\)](#)
- F8** Words in s. 35(2) inserted (9.12.2001) by [S.I. 2001/3949](#), reg. 9(1), [Sch. 1 para. 10\(3\)\(b\)](#) (with transitional provisions in [regs. 10-14](#))
- F9** Words substituted by [Copyright, Designs and Patents Act 1988 \(c. 48, SIF 67A\)](#), s. 272, [Sch. 3 para. 24\(3\)\(b\)](#)
- F10** Words substituted by [Copyright, Designs and Patents Act 1988 \(c. 48, SIF 67A\)](#), s. 272, [Sch. 3 para. 24\(3\)\(c\)](#)
- F11** S. 35(3) inserted (1.10.2005) by [Community Design Regulations 2005 \(S.I. 2005/2339\)](#), [regs. 1\(1\), 6](#)

Status: Point in time view as at 01/10/2014.

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[^{F12}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
 - (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;

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- (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.

Textual Amendments

F12 Ss. 35ZA-35ZD inserted (1.10.2014) by [Intellectual Property Act 2014 \(c. 18\)](#), **ss. 13, 24(1)**; [S.I. 2014/2330, art. 3, Sch.](#) (as amended by [The Intellectual Property Act 2014 \(Amendment\) Regulations 2014 \(S.I. 2014/2329\)](#), **regs. 1, 3**) (as amended (1.10.2014) by [The Intellectual Property Act 2014 \(Amendment\) Regulations 2014 \(S.I. 2014/2329\)](#), **regs. 1, 3**)

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.

Textual Amendments

F12 Ss. 35ZA-35ZD inserted (1.10.2014) by [Intellectual Property Act 2014 \(c. 18\)](#), **ss. 13, 24(1)**; [S.I. 2014/2330, art. 3, Sch.](#) (as amended by [The Intellectual Property Act 2014 \(Amendment\) Regulations 2014 \(S.I. 2014/2329\)](#), **regs. 1, 3**) (as amended (1.10.2014) by [The Intellectual Property Act 2014 \(Amendment\) Regulations 2014 \(S.I. 2014/2329\)](#), **regs. 1, 3**)

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.
- (3) “Relevant article” means an article which is specifically designed or adapted for making copies of a registered design intentionally.

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- (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.

Textual Amendments

F12 Ss. 35ZA-35ZD inserted (1.10.2014) by [Intellectual Property Act 2014 \(c. 18\)](#), ss. 13, 24(1); S.I. 2014/2330, art. 3, Sch. (as amended by [The Intellectual Property Act 2014 \(Amendment\) Regulations 2014 \(S.I. 2014/2329\)](#), regs. 1, 3) (as amended (1.10.2014) by [The Intellectual Property Act 2014 \(Amendment\) Regulations 2014 \(S.I. 2014/2329\)](#), regs. 1, 3)

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 [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 [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—
 - (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.

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- (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

F12 Ss. 35ZA-35ZD inserted (1.10.2014) by [Intellectual Property Act 2014 \(c. 18\)](#), ss. 13, 24(1); S.I. 2014/2330, art. 3, Sch. (as amended by [The Intellectual Property Act 2014 \(Amendment\) Regulations 2014 \(S.I. 2014/2329\)](#), regs. 1, 3) (as amended (1.10.2014) by [The Intellectual Property Act 2014 \(Amendment\) Regulations 2014 \(S.I. 2014/2329\)](#), regs. 1, 3)

[^{F14}35A [^{F13}Offence by body corporate or partnership: liability of officers or partners]

- (1) Where an offence under this Act committed by a body corporate is proved to have been committed with the consent or connivance of a director, manager, secretary or other similar officer of the body, or a person purporting to act in any such capacity, he as well as the body corporate is guilty of the offence and liable to be proceeded against and punished accordingly.
- (2) In relation to a body corporate whose affairs are managed by its members “director” means a member of the body corporate.]
- [^{F15}(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.
- (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.

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- (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.]

Textual Amendments

- F13** S. 35A title substituted (1.10.2014) by [Intellectual Property Act 2014 \(c. 18\)](#), **ss. 14, 24(1)**; S.I. 2014/2330, [art. 3](#), [Sch.](#)
- F14** S. 35A inserted by [Copyright, Designs and Patents Act 1988 \(c. 48, SIF 67A\)](#), s. 272, **Sch. 3 para. 25(1)(2)**
- F15** Ss. 35A(3)-(7) inserted (1.10.2014) by [Intellectual Property Act 2014 \(c. 18\)](#), **ss. 14, 24(1)**; S.I. 2014/2330, [art. 3](#), [Sch.](#)

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