



Copyright, Designs and Patents Act 1988

1988 CHAPTER 48

PART III

DESIGN RIGHT

CHAPTER I

DESIGN RIGHT IN ORIGINAL DESIGNS

Qualification for design right protection

217 Qualifying individuals and qualifying persons.

(1) In this Part—

^{F1}
...

^{F2} “qualifying person ” means—

- (a) an individual habitually resident in a qualifying country, or
- (b) a body corporate or other body having legal personality which—
 - (i) is formed under the law of a part of the United Kingdom or another qualifying country, and
 - (ii) has in any qualifying country a place of business at which substantial business activity is carried on.]

(2) References in this Part to a qualifying person include the Crown and the government of any other qualifying country.

(3) In this section “qualifying country” means—

- (a) the United Kingdom,
- (b) a country to which this Part extends by virtue of an Order under section 255,
^{F3}[or]

^{F4}(c)

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- (d) to the extent that an Order under section 256 so provides, a country designated under that section as enjoying reciprocal protection.

^{F5}(4)

- (5) In determining for the purpose of the definition of “qualifying person” whether substantial business activity is carried on at a place of business in any country, no account shall be taken of dealings in goods which are at all material times outside that country.

Textual Amendments

- F1** Words in s. 217(1) omitted (1.10.2014) by virtue of [Intellectual Property Act 2014 \(c. 18\)](#), **ss. 3(1)(a), 24(1)** (with [s. 3\(6\)](#)); [S.I. 2014/2330](#), art. 3, Sch.
- F2** Words in s. 217(1) substituted (1.10.2014) by [Intellectual Property Act 2014 \(c. 18\)](#), **ss. 3(1)(b), 24(1)** (with [s. 3\(6\)](#)); [S.I. 2014/2330](#), art. 3, Sch.
- F3** Word in [s. 217\(3\)\(b\)](#) inserted (31.12.2020) by [The Designs and International Trade Marks \(Amendment etc.\) \(EU Exit\) Regulations 2019 \(S.I. 2019/638\)](#), reg. 1, **Sch. 8 para. 11(a)(i)**; 2020 c. 1, Sch. 5 para. 1(1)
- F4** [S. 217\(3\)\(c\)](#) omitted (31.12.2020) by virtue of [The Designs and International Trade Marks \(Amendment etc.\) \(EU Exit\) Regulations 2019 \(S.I. 2019/638\)](#), reg. 1, **Sch. 8 para. 11(a)(ii)**; 2020 c. 1, Sch. 5 para. 1(1)
- F5** [S. 217\(4\)](#) omitted (1.10.2014) by virtue of [Intellectual Property Act 2014 \(c. 18\)](#), **ss. 3(2), 24(1)** (with [s. 3\(6\)](#)); [S.I. 2014/2330](#), art. 3, Sch.

218 Qualification by reference to designer.

- (1) This section applies to a design which is not created ^{F6}...in the course of employment.
- (2) A design to which this section applies qualifies for design right protection if the designer is ^{F7}... a qualifying person.
- (3) A joint design to which this section applies qualifies for design right protection if any of the designers is ^{F8}... a qualifying person.
- (4) Where a joint design qualifies for design right protection under this section, only those designers who are ^{F9}... qualifying persons are entitled to design right under section 215(1) (first ownership of design right: entitlement of designer).

Textual Amendments

- F6** Words in s. 218(1) omitted (1.10.2014) by virtue of [Intellectual Property Act 2014 \(c. 18\)](#), **ss. 2(2)(b), 24(1)** (with [s. 2\(3\)](#)); [S.I. 2014/2330](#), art. 3, Sch.
- F7** Words in s. 218(2) omitted (1.10.2014) by virtue of [Intellectual Property Act 2014 \(c. 18\)](#), **ss. 3(3)(a), 24(1)** (with [s. 3\(6\)](#)); [S.I. 2014/2330](#), art. 3, Sch.
- F8** Words in s. 218(3) omitted (1.10.2014) by virtue of [Intellectual Property Act 2014 \(c. 18\)](#), **ss. 3(3)(b), 24(1)** (with [s. 3\(6\)](#)); [S.I. 2014/2330](#), art. 3, Sch.
- F9** Words in s. 218(4) omitted (1.10.2014) by virtue of [Intellectual Property Act 2014 \(c. 18\)](#), **ss. 3(3)(c), 24(1)** (with [s. 3\(6\)](#)); [S.I. 2014/2330](#), art. 3, Sch.

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219 [F¹⁰Qualification by reference to employer].

- (1) A design qualifies for design right protection if it is created [F¹¹in the course of employment with] a qualifying person.
- (2) In the case of F¹²... joint employment a design qualifies for design right protection if any of the F¹²... employers is a qualifying person.
- (3) Where a design which is F¹³... created in the course of joint employment qualifies for design right protection under this section, only those F¹³... employers who are qualifying persons are entitled to design right under section [F¹⁴215(3)] (first ownership of design right: entitlement of F¹³... employer).

Textual Amendments

- F10** S. 219 heading substituted (1.10.2014) by [Intellectual Property Act 2014 \(c. 18\), ss. 2\(2\)\(c\), 24\(1\)](#) (with s. 2(3)); [S.I. 2014/2330, art. 3, Sch.](#)
- F11** Words in s. 219(1) substituted (1.10.2014) by [Intellectual Property Act 2014 \(c. 18\), ss. 2\(2\)\(c\), 24\(1\)](#) (with s. 2(3)); [S.I. 2014/2330, art. 3, Sch.](#)
- F12** Words in s. 219(2) omitted (1.10.2014) by virtue of [Intellectual Property Act 2014 \(c. 18\), ss. 2\(2\)\(d\), 24\(1\)](#) (with s. 2(3)); [S.I. 2014/2330, art. 3, Sch.](#)
- F13** Words in s. 219(3) omitted (1.10.2014) by virtue of [Intellectual Property Act 2014 \(c. 18\), ss. 2\(2\)\(e\), 24\(1\)](#) (with s. 2(3)); [S.I. 2014/2330, art. 3, Sch.](#)
- F14** Word in s. 219(3) substituted (1.10.2014) by [Intellectual Property Act 2014 \(c. 18\), ss. 2\(2\)\(f\), 24\(1\)](#) (with s. 2(3)); [S.I. 2014/2330, art. 3, Sch.](#)

220 Qualification by reference to first marketing.

- (1) A design which does not qualify for design right protection under section 218 or 219 (qualification by reference to designer^{F15}... or employer) qualifies for design right protection if the first marketing of articles made to the design—
 - (a) is by a qualifying person F¹⁶..., and
 - (b) takes place in the United Kingdom [F¹⁷or], another country to which this Part extends by virtue of an Order under section 255, F¹⁸....
- (2) If the first marketing of articles made to the design is done jointly by two or more persons, the design qualifies for design right protection if any of those persons meets the [F¹⁹requirement] specified in subsection (1)(a).
- (3) In such a case only the persons who meet [F²⁰that requirement] are entitled to design right under section 215(4) (first ownership of design right: entitlement of first marketer of articles made to the design).

F²¹(4)

Textual Amendments

- F15** Word in s. 220(1) omitted (1.10.2014) by virtue of [Intellectual Property Act 2014 \(c. 18\), ss. 2\(2\)\(g\), 24\(1\)](#) (with s. 2(3)); [S.I. 2014/2330, art. 3, Sch.](#)
- F16** Words in s. 220(1)(a) omitted (1.10.2014) by virtue of [Intellectual Property Act 2014 \(c. 18\), ss. 3\(4\)\(a\), 24\(1\)](#) (with s. 3(6)); [S.I. 2014/2330, art. 3, Sch.](#)

Changes to legislation: There are currently no known outstanding effects for the Copyright, Designs and Patents Act 1988, Cross Heading: Qualification for design right protection. (See end of Document for details)

- F17** Word in s. 220(1)(b) inserted (31.12.2020) by [The Designs and International Trade Marks \(Amendment etc.\) \(EU Exit\) Regulations 2019 \(S.I. 2019/638\)](#), reg. 1, **Sch. 8 para. 11(b)(i)**; 2020 c. 1, Sch. 5 para. 1(1)
- F18** Words in s. 220(1)(b) omitted (31.12.2020) by virtue of [The Designs and International Trade Marks \(Amendment etc.\) \(EU Exit\) Regulations 2019 \(S.I. 2019/638\)](#), reg. 1, **Sch. 8 para. 11(b)(ii)**; 2020 c. 1, Sch. 5 para. 1(1)
- F19** Word in s. 220(2) substituted (1.10.2014) by [Intellectual Property Act 2014 \(c. 18\)](#), **ss. 3(4)(b)**, 24(1) (with s. 3(6)); [S.I. 2014/2330](#), art. 3, Sch.
- F20** Words in s. 220(3) substituted (1.10.2014) by [Intellectual Property Act 2014 \(c. 18\)](#), **ss. 3(4)(c)**, 24(1) (with s. 3(6)); [S.I. 2014/2330](#), art. 3, Sch.
- F21** S. 220(4) omitted (1.10.2014) by virtue of [Intellectual Property Act 2014 \(c. 18\)](#), **ss. 3(4)(d)**, 24(1) (with s. 3(6)); [S.I. 2014/2330](#), art. 3, Sch.

221 Power to make further provision as to qualification.

- (1) Her Majesty may, with a view to fulfilling an international obligation of the United Kingdom, by Order in Council provide that a design qualifies for design right protection if such requirements as are specified in the Order are met.
- (2) An Order may make different provision for different descriptions of design or article; and may make such consequential modifications of the operation of sections 215 (ownership of design right) and sections 218 to 220 (other means of qualification) as appear to Her Majesty to be appropriate.
- (3) A statutory instrument containing an Order in Council under this section shall be subject to annulment in pursuance of a resolution of either House of Parliament.

Changes to legislation:

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