



Copyright, Designs and Patents Act 1988

1988 CHAPTER 48

PART III

DESIGN RIGHT

CHAPTER II

RIGHTS OF DESIGN RIGHT OWNER AND REMEDIES

Infringement of design right

226 Primary infringement of design right.

- (1) The owner of design right in a design has the exclusive right to reproduce the design for commercial purposes—
 - (a) by making articles to that design, or
 - (b) by making a design document recording the design for the purpose of enabling such articles to be made.
- (2) Reproduction of a design by making articles to the design means copying the design so as to produce articles exactly or substantially to that design, and references in this Part to making articles to a design shall be construed accordingly.
- (3) Design right is infringed by a person who without the licence of the design right owner does, or authorises another to do, anything which by virtue of this section is the exclusive right of the design right owner.
- [^{F1}(3A) But design right in a design is not infringed where a person does, or authorises another to do, anything relating to an article that is made to the design if the article has been put on the market in the United Kingdom or the European Economic Area with the licence of the design right owner.]
- (4) For the purposes of this section reproduction may be direct or indirect, and it is immaterial whether any intervening acts themselves infringe the design right.

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

- (5) This section has effect subject to the provisions of Chapter III (exceptions to rights of design right owner).

Textual Amendments

- F1** S. 226(3A) inserted (31.12.2023) by [The Intellectual Property \(Exhaustion of Rights\) \(Amendment\) Regulations 2023 \(S.I. 2023/1287\)](#), regs. 1(b), **4(3)**

227 Secondary infringement: importing or dealing with infringing article.

- (1) Design right is infringed by a person who, without the licence of the design right owner—
- (a) imports into the United Kingdom for commercial purposes, or
 - (b) has in his possession for commercial purposes, or
 - (c) sells, lets for hire, or offers or exposes for sale or hire, in the course of a business,
- an article which is, and which he knows or has reason to believe is, an infringing article.
- (2) This section has effect subject to the provisions of Chapter III (exceptions to rights of design right owner).

228 Meaning of “infringing article”.

- (1) In this Part “infringing article”, in relation to a design, shall be construed in accordance with this section.
- (2) An article is an infringing article if its making to that design was an infringement of design right in the design.
- (3) An article is also an infringing article if—
- (a) it has been or is proposed to be imported into the United Kingdom, and
 - (b) its making to that design in the United Kingdom would have been an infringement of design right in the design or a breach of an exclusive licence agreement relating to the design.
- (4) Where it is shown that an article is made to a design in which design right subsists or has subsisted at any time, it shall be presumed until the contrary is proved that the article was made at a time when design right subsisted.
- [^{F2}(5) Nothing in subsection (3) shall be construed as applying to an article which—
- (a) may lawfully be imported into the United Kingdom by virtue of anything which forms part of assimilated law as a result of section 3 of the European Union (Withdrawal) Act 2018, or
 - (b) has been or is proposed to be imported into the United Kingdom after being put on the market in the European Economic Area by or with the licence of the design right owner.
- (5A) In subsection (5)(a), the reference to assimilated law is to be read, until the coming into force of paragraph 2(6) of Schedule 2 to the Retained EU Law (Revocation and Reform) Act 2023, as a reference to retained EU law.]

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

- (6) The expression “infringing article” does not include a design document, notwithstanding that its making was or would have been an infringement of design right.

Textual Amendments

- F2** S. 228(5)(5A) substituted for s. 228(5) (31.12.2023) by [The Intellectual Property \(Exhaustion of Rights\) \(Amendment\) Regulations 2023](#) (S.I. 2023/1287), regs. 1(b), **4(4)**

Changes to legislation:

There are currently no known outstanding effects for the Copyright, Designs and Patents Act 1988, Cross Heading: Infringement of design right.