



Copyright, Designs and Patents Act 1988

1988 CHAPTER 48

PART III **E+W+S+N.I.**

DESIGN RIGHT

CHAPTER IV **E+W+S+N.I.**

JURISDICTION OF THE COMPTROLLER AND THE COURT

Jurisdiction of the comptroller

246 Jurisdiction to decide matters relating to design right. **E+W+S+N.I.**

- (1) A party to a dispute as to any of the following matters may refer the dispute to the comptroller for his decision—
 - (a) the subsistence of design right,
 - (b) the term of design right, or
 - (c) the identity of the person in whom design right first vested;and the comptroller's decision on the reference is binding on the parties to the dispute.
- (2) No other court or tribunal shall decide any such matter except—
 - (a) on a reference or appeal from the comptroller,
 - (b) in infringement or other proceedings in which the issue arises incidentally, or
 - (c) in proceedings brought with the agreement of the parties or the leave of the comptroller.
- (3) The comptroller has jurisdiction to decide any incidental question of fact or law arising in the course of a reference under this section.

247 Application to settle terms of licence of right. **E+W+S+N.I.**

- (1) A person requiring a licence which is available as of right by virtue of—

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- (a) section 237 (licences available in last five years of design right), or
 - (b) an order under section 238 (licences made available in the public interest),
- may apply to the comptroller to settle the terms of the licence.
- (2) No application for the settlement of the terms of a licence available by virtue of section 237 may be made earlier than one year before the earliest date on which the licence may take effect under that section.
 - (3) The terms of a licence settled by the comptroller shall authorise the licensee to do—
 - (a) in the case of licence available by virtue of section 237, everything which would be an infringement of the design right in the absence of a licence;
 - (b) in the case of a licence available by virtue of section 238, everything in respect of which a licence is so available.
 - (4) In settling the terms of a licence the comptroller shall have regard to such factors as may be prescribed by the Secretary of State by order made by statutory instrument.
 - (5) No such order shall be made unless a draft of it has been laid before and approved by a resolution of each House of Parliament.
 - (6) Where the terms of a licence are settled by the comptroller, the licence has effect—
 - (a) in the case of an application in respect of a licence available by virtue of section 237 made before the earliest date on which the licence may take effect under that section, from that date;
 - (b) in any other case, from the date on which the application to the comptroller was made.

248 Settlement of terms where design right owner unknown. E+W+S+N.I.

- (1) This section applies where a person making an application under section 247 (settlement of terms of licence of right) is unable on reasonable inquiry to discover the identity of the design right owner.
- (2) The comptroller may in settling the terms of the licence order that the licence shall be free of any obligation as to royalties or other payments.
- (3) If such an order is made the design right owner may apply to the comptroller to vary the terms of the licence with effect from the date on which his application is made.
- (4) If the terms of a licence are settled by the comptroller and it is subsequently established that a licence was not available as of right, the licensee shall not be liable in damages for, or for an account of profits in respect of, anything done before he was aware of any claim by the design right owner that a licence was not available.

249 Appeals as to terms of licence of right. E+W+S+N.I.

- (1) An appeal lies from any decision of the comptroller under section 247 or 248 (settlement of terms of licence of right) to [^{F1}a person appointed under section 27A of the Registered Designs Act 1949].

^{F2}(2)

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Annotations:

Amendments (Textual)

- F1** Words in s. 249(1) substituted (6.4.2015) by [Intellectual Property Act 2014 \(c. 18\)](#), **ss. 10(7)(a)**, 24(1); [S.I. 2015/165](#), art. 3
- F2** S. 249(2) omitted (6.4.2015) by virtue of [Intellectual Property Act 2014 \(c. 18\)](#), **ss. 10(7)(b)**, 24(1); [S.I. 2015/165](#), art. 3

[^{F3}**249A Opinions service** **E+W+S+N.I.**

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.]

Annotations:

Amendments (Textual)

- F3** S. 249A inserted (1.10.2014) by [Intellectual Property Act 2014 \(c. 18\)](#), **ss. 11(2)**, 24(1); [S.I. 2014/2330](#), art. 3, Sch.

250 Rules. **E+W+S+N.I.**

- (1) The Secretary of State may make rules for regulating the procedure to be followed in connection with any proceeding before the comptroller under this Part.
- (2) Rules may, in particular, make provision—
 - (a) prescribing forms;
 - (b) requiring fees to be paid;
 - (c) authorising the rectification of irregularities of procedure;
 - (d) regulating the mode of giving evidence and empowering the comptroller to compel the attendance of witnesses and the discovery of and production of documents;
 - (e) providing for the appointment of advisers to assist the comptroller in proceedings before him;
 - (f) prescribing time limits for doing anything required to be done (and providing for the alteration of any such limit); and
 - (g) empowering the comptroller to award costs and to direct how, to what party and from what parties, costs are to be paid.
- (3) Rules prescribing fees require the consent of the Treasury.
- (4) The remuneration of an adviser appointed to assist the comptroller shall be determined by the Secretary of State with the consent of the Treasury and shall be defrayed out of money provided by Parliament.
- (5) Rules shall be made by statutory instrument which shall be subject to annulment in pursuance of a resolution of either House of Parliament.

Changes to legislation:

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Changes and effects yet to be applied to the whole Act associated Parts and Chapters:

Whole provisions yet to be inserted into this Act (including any effects on those provisions):

- s. 40A(1A)(aa) inserted by 2017 c. 30 s. 31(4)(b)
- s. 40A(1ZA) inserted by 2017 c. 30 s. 31(3)
- s. 249(1A) inserted by 2007 c. 15 s. 143(3)(b)