



Registered Designs Act 1949

1949 CHAPTER 88 12 13 and 14 Geo 6

Offences

[^{F1}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.
- (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.

Changes to legislation: Registered Designs Act 1949, Section 35ZD is up to date with all changes known to be in force on or before 21 January 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) View outstanding changes

- (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.
- (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

- F1** 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**)

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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. 22(1)(aa) and word inserted by [2014 c. 18 s. 9\(2\)](#)
- s. 22(5) inserted by [2014 c. 18 s. 9\(4\)](#)
- s. 22(6)(7) inserted by [2014 c. 18 s. 9\(5\)](#)