



Copyright, Designs and Patents Act 1988

1988 CHAPTER 48

PART III

DESIGN RIGHT

CHAPTER III

EXCEPTIONS TO RIGHTS OF DESIGN RIGHT OWNERS

Availability of licences of right

237 Licences available in last five years of design right.

- (1) Any person is entitled as of right to a licence to do in the last five years of the design right term anything which would otherwise infringe the design right.
- (2) The terms of the licence shall, in default of agreement, be settled by the comptroller.
- (3) The Secretary of State may if it appears to him necessary in order to—
 - (a) comply with an international obligation of the United Kingdom, or
 - (b) secure or maintain reciprocal protection for British designs in other countries,by order exclude from the operation of subsection (1) designs of a description specified in the order or designs applied to articles of a description so specified.
- (4) An order shall be made by statutory instrument; and no order shall be made unless a draft of it has been laid before and approved by a resolution of each House of Parliament.

238 Powers exercisable for protection of the public interest.

- [^{F1}(1) Subsection (1A) applies where whatever needs to be remedied, mitigated or prevented by the Secretary of State [^{F2} or (as the case may be) the Competition and Markets Authority] under section 12(5) of the Competition Act 1980 or section 41(2), 55(2),

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

66(6), 75(2), 83(2), 138(2), 147(2) [^{F3}, 147A(2)] or 160(2) of, or paragraph 5(2) or 10(2) of Schedule 7 to, the Enterprise Act 2002 (powers to take remedial action following references to the [^{F4} Competition and Markets Authority] in connection with public bodies and certain other persons, mergers or market investigations etc.) consists of or includes—

- (a) conditions in licences granted by a design right owner restricting the use of the design by the licensee or the right of the design right owner to grant other licences, or
- (b) a refusal of a design right owner to grant licences on reasonable terms.

(1A) The powers conferred by Schedule 8 to the Enterprise Act 2002 include power to cancel or modify those conditions and, instead or in addition, to provide that licences in respect of the design right shall be available as of right.

(2) The references to anything permitted by Schedule 8 to the Enterprise Act 2002 in section 12(5A) of the Competition Act 1980 and in sections 75(4)(a), 83(4)(a), 84(2)(a), 89(1), 160(4)(a), 161(3)(a) and 164(1) of, and paragraphs 5, 10 and 11 of Schedule 7 to, the Act of 2002 shall be construed accordingly.]

(3) The terms of a licence available by virtue of this section shall, in default of agreement, be settled by the comptroller.

Textual Amendments

- F1** S. 238(1)(1A)(2) substituted (20.6.2003 for certain purposes and 29.12.2004 otherwise) for s. 238(1)(2) by 2002 c. 40, ss. 278(1), 279, Sch. 25 para. 18(4); S.I. 2003/1397, **arts. 2, 3(1)**, Sch. (with arts. 4-12); S.I. 2004/3233, **art. 2**, Sch. (with arts. 3-5)
- F2** Words in s. 238(1) substituted (1.4.2014) by The Enterprise and Regulatory Reform Act 2013 (Competition) (Consequential, Transitional and Saving Provisions) Order 2014 (S.I. 2014/892), art. 1(1), **Sch. 1 para. 58(a)** (with art. 3)
- F3** Word in s. 238(1) inserted (1.4.2014) by The Enterprise and Regulatory Reform Act 2013 (Competition) (Consequential, Transitional and Saving Provisions) Order 2014 (S.I. 2014/892), art. 1(1), **Sch. 1 para. 58(b)** (with art. 3)
- F4** Words in s. 238(1) substituted (1.4.2014) by The Enterprise and Regulatory Reform Act 2013 (Competition) (Consequential, Transitional and Saving Provisions) Order 2014 (S.I. 2014/892), art. 1(1), **Sch. 1 para. 58(c)** (with art. 3)

Modifications etc. (not altering text)

- C1** S. 238(1) amended (20.6.2003) by The Enterprise Act 2002 (Protection of Legitimate Interests) Order 2003 (S.I. 2003/1592), **Sch. 4 para. 7(2)(a)**
- C2** S. 238(2) amended (20.6.2003) by The Enterprise Act 2002 (Protection of Legitimate Interests) Order 2003 (S.I. 2003/1592), **Sch. 4 para. 7(2)(a)**

239 Undertaking to take licence of right in infringement proceedings.

(1) If in proceedings for infringement of design right in a design in respect of which a licence is available as of right under section 237 or 238 the defendant undertakes to take a licence on such terms as may be agreed or, in default of agreement, settled by the comptroller under that section—

- (a) no injunction shall be granted against him,
- (b) no order for delivery up shall be made under section 230, and

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

- (c) the amount recoverable against him by way of damages or on an account of profits shall not exceed double the amount which would have been payable by him as licensee if such a licence on those terms had been granted before the earliest infringement.
- (2) An undertaking may be given at any time before final order in the proceedings, without any admission of liability.
- (3) Nothing in this section affects the remedies available in respect of an infringement committed before licences of right were available.

Changes to legislation:

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