



# Copyright, Designs and Patents Act 1988

## 1988 CHAPTER 48

### PART III

#### DESIGN RIGHT

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#### 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**

- (1) Where the matters specified in a report of the Monopolies and Mergers Commission as being those which in the Commission's opinion operate, may be expected to operate or have operated against the public interest include—

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*Status: This is the original version (as it was originally enacted).*

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- (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,
- the powers conferred by Part I of Schedule 8 to the Fair Trading Act 1973 (powers exercisable for purpose of remedying or preventing adverse effects specified in report of Commission) 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 in sections 56(2) and 73(2) of that Act, and sections 10(2)(b) and 12(5) of the Competition Act 1980, to the powers specified in that Part of that Schedule 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.

### **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
  - (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.