

INTELLECTUAL PROPERTY ACT 2014

EXPLANATORY NOTES

COMMENTARY

Part 1: DESIGNS

Section 11: UK Registered Designs - Opinions service

41. *Subsection (1)* introduces, through a new section 28A to be inserted into the RDA, a power for the Secretary of State to provide in regulations for a non-binding opinions service for designs, similar to that which already exists for patents¹. The opinions service will cover UK registered designs and its scope may be extended to include, for example, other design rights such as the UK unregistered design right. *Subsection (2)* inserts a new section 249A into the CDPA, the effect of which is to enable the regulations to cover the UK unregistered design right.
42. Subsections (2) to (5) of the new section 28A provide detail about what must or may be included in the regulations. The regulations could include, for example, circumstances where the registrar will not be required to give an opinion, and information and fees that should accompany a request for an opinion. Neither the registrar nor any IPO official will incur liability under the service (as is the case for official actions under trade mark² and patent law³).
43. *Subsection (3)* amends section 37 of the RDA to ensure that the first regulations to be made under this power must be laid in draft before, and approved by a resolution of, each House of Parliament. Regulations made subsequently will be subject to annulment in pursuance of a resolution of either House of Parliament.
44. Subsection (7) of the new section 28A requires that the regulations must provide for an appeal relating to an opinion to be made to an appointed person (i.e. appointed under the new section 27A of the RDA). Details of the appeal procedure will be included in the regulations..

¹ www.ipo.gov.uk/pro-p-opinion.htm

² Section 70 of the Trade Marks Act 1994

³ Section 116 of the Patents Act 1977