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Registered Designs Act 1949

1949 CHAPTER 88 12 13 and 14 Geo 6

Effect of registration, etc.

[^{F1}7 Right given by registration.

- (1) The registration of a design under this Act gives the registered proprietor the exclusive right to use the design and any design which does not produce on the informed user a different overall impression.
- (2) For the purposes of subsection (1) above and section 7A of this Act any reference to the use of a design includes a reference to—
 - (a) the making, offering, putting on the market, importing, exporting or using of a product in which the design is incorporated or to which it is applied; or
 - (b) stocking such a product for those purposes.
- (3) In determining for the purposes of subsection (1) above whether a design produces a different overall impression on the informed user, the degree of freedom of the author in creating his design shall be taken into consideration.
- (4) The right conferred by subsection (1) above is subject to any limitation attaching to the registration in question (including, in particular, any partial disclaimer or any declaration by the registrar or a court of partial invalidity).]

Textual Amendments

F1 Ss. 7 and 7A substituted (9.12.2001) for s. 7 by [S.I. 2001/3949](#), [reg. 5](#) (with transitional provisions in [regs. 10-14](#))

[^{F2}7A Infringements of rights in registered designs.

- (1) Subject as follows, the right in a registered design is infringed by a person who, without the consent of the registered proprietor, does anything which by virtue of section 7 of this Act is the exclusive right of the registered proprietor.

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- (2) The right in a registered design is not infringed by—
- (a) an act which is done privately and for purposes which are not commercial;
 - (b) an act which is done for experimental purposes;
 - (c) an act of reproduction for teaching purposes or for the purpose of making citations provided that the conditions mentioned in subsection (3) below are satisfied;
 - (d) the use of equipment on ships or aircraft which are registered in another country but which are temporarily in the United Kingdom;
 - (e) the importation into the United Kingdom of spare parts or accessories for the purpose of repairing such ships or aircraft; or
 - (f) the carrying out of repairs on such ships or aircraft.
- (3) The conditions mentioned in this subsection are—
- (a) the act of reproduction is compatible with fair trade practice and does not unduly prejudice the normal exploitation of the design; and
 - (b) mention is made of the source.
- (4) The right in a registered design is not infringed by an act which relates to a product in which any design protected by the registration is incorporated or to which it is applied if the product has been put on the market in the European Economic Area by the registered proprietor or with his consent.
- (5) The right in a registered design of a component part which may be used for the purpose of the repair of a complex product so as to restore its original appearance is not infringed by the use for that purpose of any design protected by the registration.
- (6) No proceedings shall be taken in respect of an infringement of the right in a registered design committed before the date on which the certificate of registration of the design under this Act is granted.]

Textual Amendments

F2 Ss. 7 and 7A substituted (9.12.2001) for s. 7 by [S.I. 2001/3949](#), [reg. 4](#) (with transitional provisions in [regs. 10-14](#))

[^{F38} **Duration of right in registered design.**

- (1) The right in a registered design subsists in the first instance for a period of five years from the date of the registration of the design.
- (2) The period for which the right subsists may be extended for a second, third, fourth and fifth period of five years, by applying to the registrar for an extension and paying the prescribed renewal fee.
- (3) If the first, second, third or fourth period expires without such application and payment being made, the right shall cease to have effect; and the registrar shall, in accordance with rules made by the Secretary of State, notify the proprietor of that fact.
- (4) If during the period of six months immediately following the end of that period an application for extension is made and the prescribed renewal fee and any prescribed additional fee is paid, the right shall be treated as if it had never expired, with the result that—

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- (a) anything done under or in relation to the right during that further period shall be treated as valid,
- (b) an act which would have constituted an infringement of the right if it has not expired shall be treated as an infringement, and
- (c) an act which would have constituted use of the design for the services of the Crown if the right had not expired shall be treated as such use.

^{F4}(5)

^{F4}(6)]

Textual Amendments

F3 Ss. 8, 8A, 8B substituted for s. 8 by [Copyright, Designs and Patents Act 1988 \(c. 48, SIF 67A\)](#), s. [269\(1\)\(2\)](#)

F4 S. 8(5)(6) repealed (9.12.2001) by [S.I. 2001/3949, reg. 9\(2\)](#), [Sch. 2](#) (with transitional provisions in [regs. 10-14](#))

[^{F5}8A Restoration of lapsed right in design.

- (1) Where the right in a registered design has expired by reason of a failure to extend, in accordance with section 8(2) or (4), the period for which the right subsists, an application for the restoration of the right in the design may be made to the registrar within the prescribed period.
- (2) The application may be made by the person who was the registered proprietor of the design or by any other person who would have been entitled to the right in the design if it had not expired; and where the design was held by two or more persons jointly, the application may, with the leave of the registrar, be made by one or more of them without joining the others.
- (3) Notice of the application shall be published by the registrar in the prescribed manner.
- (4) If the registrar is satisfied that the proprietor took reasonable care to see that the period for which the right subsisted was extended in accordance with section 8(2) or (4), he shall, on payment of any unpaid renewal fee and any prescribed additional fee, order the restoration of the right in the design.
- (5) The order may be made subject to such conditions as the registrar thinks fit, and if the proprietor of the design does not comply with any condition the registrar may revoke the order and give such consequential directions as he thinks fit.
- (6) Rules altering the period prescribed for the purposes of subsection (1) may contain such transitional provisions and savings as appear to the Secretary of State to be necessary or expedient.]

Textual Amendments

F5 Ss. 8, 8A, 8B substituted for s. 8 by [Copyright, Designs and Patents Act 1988 \(c. 48, SIF 67A\)](#), s. [269\(1\)\(2\)](#)

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[^{F6}8B Effect of order for restoration of right.

- (1) The effect of an order under section 8A for the restoration of the right in a registered design is as follows.
- (2) Anything done under or in relation to the right during the period between expiry and restoration shall be treated as valid.
- (3) Anything done during that period which would have constituted an infringement if the right had not expired shall be treated as an infringement—
 - (a) if done at a time when it was possible for an application for extension to be made under section 8(4); or
 - (b) if it was a continuation or repetition of an earlier infringing act.
- (4) If, after it was no longer possible for such an application for extension to be made and before publication of notice of the application for restoration, a person—
 - (a) began in good faith to do an act which would have constituted an infringement of the right in the design if it had not expired, or
 - (b) made in good faith effective and serious preparations to do such an act,
 he has the right to continue to do the act or, as the case may be, to do the act, notwithstanding the restoration of the right in the design; but this does not extend to granting a licence to another person to do the act.
- (5) If the act was done, or the preparations were made, in the course of a business, the person entitled to the right conferred by subsection (4) may—
 - (a) authorise the doing of that act by any partners of his for the time being in that business, and
 - (b) assign that right, or transmit it on death (or in the case of a body corporate on its dissolution), to any person who acquires that part of the business in the course of which the act was done or the preparations were made.
- (6) Where [^{F7}a product] is disposed of to another in exercise of the rights conferred by subsection (4) or subsection (5), that other and any person claiming through him may deal with [^{F7}the product] in the same way as if it had been disposed of by the registered proprietor of the design.
- (7) The above provisions apply in relation to the use of a registered design for the services of the Crown as they apply in relation to infringement of the right in the design.]

Textual Amendments

- F6** Ss. 8, 8A, 8B substituted for s. 8 by [Copyright, Designs and Patents Act 1988 \(c. 48, SIF 67A\)](#), [s. 269\(1\)\(2\)](#)
- F7** Words in s. 8B(6) substituted (9.12.2001) by [S.I. 2001/3949, reg. 9\(1\)](#), [Sch. 1 para. 2\(a\)\(b\)](#) (with transitional provisions in [regs. 10-14](#))

9 Exemption of innocent infringer from liability for damages.

- (1) In proceedings for the infringement of [^{F8}the right in a registered design] damages shall not be awarded against a defendant who proves that at the date of the infringement he was not aware, and had no reasonable ground for supposing, that the design was registered; and a person shall not be deemed to have been aware or to have had reasonable grounds for supposing as aforesaid by reason only of the marking of [^{F9}a

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product] with the word “registered” or any abbreviation thereof, or any word or words expressing or implying that the design applied to [^{F9}, or incorporated in, the product] has been registered, unless the number of the design accompanied the word or words or the abbreviation in question.

(2) Nothing in this section shall affect the power of the court to grant an injunction in any proceedings for infringement of [^{F8}the right in a registered design].

Textual Amendments

- F8** Words substituted by [Copyright, Designs and Patents Act 1988 \(c. 48, SIF 67A\)](#), s. 272, **Sch. 3 para. 5**
- F9** Words in s. 9(1) substituted (9.12.2001) by S.I. 2001/3949, reg. 9(1), **Sch. 1 para. 3(a)(b)** (with transitional provisions in [regs. 10-14](#))

^{F10}10

Textual Amendments

- F10** S. 10 repealed (9.12.2001) by S.I. 2001/3949, reg. 6(1), reg. 9(2), **Sch. 2** (with transitional provisions in [regs. 10-14](#))

[^{F11}11 **Cancellation of registration.**

The registrar may, upon a request made in the prescribed manner by the registered proprietor, cancel the registration of a design.]

Textual Amendments

- F11** Ss. 11-11ZF substituted (9.12.2001) for s. 11 by S.I. 2001/3949, **reg. 7** (with transitional provisions in [regs. 10-14](#))

[^{F12}11ZA**Grounds for invalidity of registration.**

- (1) The registration of a design may be declared invalid on any of the grounds mentioned in section 1A of this Act.
- (2) The registration of a design may be declared invalid on the ground of the registered proprietor not being the proprietor of the design and the proprietor of the design objecting.
- (3) The registration of a design involving the use of an earlier distinctive sign may be declared invalid on the ground of an objection by the holder of rights to the sign which include the right to prohibit in the United Kingdom such use of the sign.
- (4) The registration of a design constituting an unauthorised use of a work protected by the law of copyright in the United Kingdom may be declared invalid on the ground of an objection by the owner of the copyright.
- (5) In this section and sections 11ZB, 11ZC and 11ZE of this Act (other than section 11ZE(1)) references to the registration of a design include references to

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the former registration of a design; and these sections shall apply, with necessary modifications, in relation to such former registrations.]

Textual Amendments

F12 Ss. 11-11ZF substituted (9.12.2001) for s. 11 by [S.I. 2001/3949](#), [reg. 7](#) (with transitional provisions in [regs. 10-14](#))

[^{F13}11ZB] Applications for declaration of invalidity.

- (1) Any person interested may make an application to the registrar for a declaration of invalidity on the ground mentioned in section 1A(1)(a) or (b) of this Act.
- (2) Any person concerned by the use in question may make an application to the registrar for a declaration of invalidity on the ground mentioned in section 1A(1)(c) of this Act.
- (3) The relevant person may make an application to the registrar for a declaration of invalidity on the ground mentioned in section 1A(2) of this Act.
- (4) In subsection (3) above “the relevant person” means, in relation to an earlier design protected by virtue of registration under this Act^{F14} or the Community Design Regulation] or an application for such registration, the registered proprietor of the design^{F15}, the holder of the registered Community design] or (as the case may be) the applicant.
- (5) The person able to make an objection under subsection (2), (3) or (4) of section 11ZA of this Act may make an application to the registrar for a declaration of invalidity on the ground mentioned in that subsection.
- (6) An application may be made under this section in relation to a design at any time after the design has been registered.]

Textual Amendments

F13 Ss. 11-11ZF substituted (9.12.2001) for s. 11 by [S.I. 2001/3949](#), [reg. 7](#) (with transitional provisions in [regs. 10-14](#))

F14 Words in s. 11ZB(4) inserted (1.4.2003) by [Registered Designs Regulations 2003 \(S.I. 2003/550\)](#), [regs. 1\(1\), 2\(3\)\(a\)](#) (with [regs. 3-5](#))

F15 Words in s. 11ZB(4) inserted (1.4.2003) by [Registered Designs Regulations 2003 \(S.I. 2003/550\)](#), [regs. 1\(1\), 2\(3\)\(b\)](#) (with [regs. 3-5](#))

[^{F16}11ZC] Determination of applications for declaration of invalidity.

- (1) This section applies where an application has been made to the registrar for a declaration of invalidity in relation to a registration.
- (2) If it appears to the registrar that the application has not been made in accordance with any rules made under this Act, he may refuse the application.
- (3) If it appears to the registrar that the application has not been made in accordance with section 11ZB of this Act, he shall refuse the application.

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- (4) Subject to subsections (2) and (3) above, the registrar shall make a declaration of invalidity if it appears to him that the ground of invalidity specified in the application has been established in relation to the registration.
- (5) Otherwise the registrar shall refuse the application.
- (6) A declaration of invalidity may be a declaration of partial invalidity.]

Textual Amendments

F16 Ss. 11-11ZF substituted (9.12.2001) for s. 11 by [S.I. 2001/3949](#), [reg. 7](#) (with transitional provisions in [regs. 10-14](#))

[^{F17}11ZDModification of registration.

- (1) Subsections (2) and (3) below apply where the registrar intends to declare the registration of a design invalid on any ground mentioned in section 1A(1)(b) or (c) or 11ZA(3) or (4) of this Act.
- (2) The registrar shall inform the registered proprietor of that fact.
- (3) The registered proprietor may make an application to the registrar for the registrar to make such modifications to the registration of the design as the registered proprietor specifies in his application.
- (4) Such modifications may, in particular, include the inclusion on the register of a partial disclaimer by the registered proprietor.
- (5) If it appears to the registrar that the application has not been made in accordance with any rules made under this Act, the registrar may refuse the application.
- (6) If it appears to the registrar that the identity of the design is not retained or the modified registration would be invalid by virtue of section 11ZA of this Act, the registrar shall refuse the application.
- (7) Otherwise the registrar shall make the specified modifications.
- (8) A modification of a registration made under this section shall have effect, and be treated always to have had effect, from the grant of registration.]

Textual Amendments

F17 Ss. 11-11ZF substituted (9.12.2001) for s. 11 by [S.I. 2001/3949](#), [reg. 7](#) (with transitional provisions in [regs. 10-14](#))

[^{F18}11ZEEffect of cancellation or invalidation of registration.

- (1) A cancellation of registration under section 11 of this Act takes effect from the date of the registrar's decision or from such other date as the registrar may direct.
- (2) Where the registrar declares the registration of a design invalid to any extent, the registration shall to that extent be treated as having been invalid from the date of registration or from such other date as the registrar may direct.]

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Textual Amendments

F18 Ss. 11-11ZF substituted (9.12.2001) for s. 11 by [S.I. 2001/3949](#), [reg. 7](#) (with transitional provisions in [regs. 10-14](#))

[^{F19}11ZF Appeals in relation to cancellation or invalidation.

An appeal lies from any decision of the registrar under section 11 to 11ZE of this Act.]

Textual Amendments

F19 Ss. 11-11ZF substituted (9.12.2001) for s. 11 by [S.I. 2001/3949](#), [reg. 7](#) (with transitional provisions in [regs. 10-14](#))

[^{F20}11A Powers exercisable for protection of the public interest.

(1) Where a report of the [^{F21}Competition Commission] has been laid before Parliament containing conclusions to the effect—

- (a) on a monopoly reference, that a monopoly situation exists and facts found by the Commission operate or may be expected to operate against the public interest,
- (b) on a merger reference, that a merger situation qualifying for investigation has been created and the creation of the situation, or particular elements in or consequences of it specified in the report, operate or may be expected to operate against the public interest,
- (c) on a competition reference, that a person was engaged in an anti—competitive practice which operated or may be expected to operate against the public interest, or
- (d) on a reference under section 11 of the Competition Act 1980 (reference of public bodies and certain other persons), that a person is pursuing a course of conduct which operates against the public interest,

the appropriate Minister or Ministers may apply to the registrar to take action under this section.

(2) Before making an application the appropriate Minister or Ministers shall publish, in such a manner as he or they think appropriate, a notice describing the nature of the proposed application and shall consider any representations which may be made within 30 days of such publication by persons whose interests appear to him or them to be affected.

(3) If on an application under this section it appears to the registrar that the matters specified in the Commission’s report as being those which in the Commission’s opinion operate or operated or may be expected to operate against the public interest include—

- (a) conditions in licences granted in respect of a registered design by its proprietor restricting the use of the design by the licensee or the right of the proprietor to grant other licences, ^{F22} . . .
- (b)

he may by order cancel or modify any such condition ^{F23} . . .

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^{F24}(4)

^{F24}(5)

(6) An appeal lies from any order of the registrar under this section.

(7) In this section “the appropriate Minister or Ministers” means the Minister or Ministers to whom the report of the [^{F21}Competition Commission] was made.]

Textual Amendments

F20 Ss. 11A, 11B inserted by [Copyright, Designs and Patents Act 1988 \(c. 48, SIF 67A\)](#), ss. **266(5)**, 270

F21 Words in s. 11A(1)(7) substituted (1.4.1999) by [S.I. 1999/506](#), **art. 9** (with **art. 3**)

F22 S. 11A(3)(b) and word repealed (9.12.2001) by [S.I. 2001/3949](#), **regs. 6(2)(a), 9(2)**, **Sch. 2** (with transitional provisions in [regs. 10-14](#))

F23 Words in s. 11A(3) repealed (9.12.2001) by [S.I. 2001/3949](#), **regs. 6(2)(b), 9(2)**, **Sch. 2** (with transitional provisions in [regs. 10-14](#))

F24 S. 11A(4)(5) repealed (9.12.2001) by [S.I. 2001/3949](#), **reg. 9(2)**, **Sch. 2** (with transitional provisions in [regs. 10-14](#))

VALID FROM 20/06/2003

[^{F25}11A] Powers exercisable following merger and market investigations

(1) Subsection (2) below applies where—

- (a) section 41(2), 55(2), 66(6), 75(2), 83(2), 138(2), 147(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 merger or market investigations) applies;
- (b) the Competition Commission or (as the case may be) the Secretary of State considers that it would be appropriate to make an application under this section for the purpose of remedying, mitigating or preventing a matter which cannot be dealt with under the enactment concerned; and
- (c) the matter concerned involves conditions in licences granted in respect of a registered design by its proprietor restricting the use of the design by the licensee or the right of the proprietor to grant other licences.

(2) The Competition Commission or (as the case may be) the Secretary of State may apply to the registrar to take action under this section.

(3) Before making an application the Competition Commission or (as the case may be) the Secretary of State shall publish, in such manner as it or he thinks appropriate, a notice describing the nature of the proposed application and shall consider any representations which may be made within 30 days of such publication by persons whose interests appear to it or him to be affected.

(4) The registrar may, if it appears to him on an application under this section that the application is made in accordance with this section, by order cancel or modify any condition concerned of the kind mentioned in subsection (1)(c) above.

(5) An appeal lies from any order of the registrar under this section.

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- (6) References in this section to the Competition Commission shall, in cases where section 75(2) of the Enterprise Act 2002 applies, be read as references to the Office of Fair Trading.
- (7) References in section 35, 36, 47, 63, 134 or 141 of the Enterprise Act 2002 (questions to be decided by the Competition Commission in its reports) to taking action under section 41(2), 55, 66, 138 or 147 shall include references to taking action under subsection (2) above.
- (8) An order made by virtue of this section in consequence of action under subsection (2) above where an enactment mentioned in subsection (1)(a) above applies shall be treated, for the purposes of sections 91(3), 92(1)(a), 162(1) and 166(3) of the Enterprise Act 2002 (duties to register and keep under review enforcement orders etc.), as if it were made under the relevant power in Part 3 or (as the case may be) 4 of that Act to make an enforcement order (within the meaning of the Part concerned).]

Textual Amendments

F25 S. 11AB inserted (prosp.) by Enterprise Act 2002 (c. 40), ss. 278(1), 279, Sch. 25 {para. 1(3)}

^{F26} **11B**

Textual Amendments

F26 S. 11B repealed (9.12.2001) by S.I. 2001/3949, reg. 9(2), Sch. 2 (with transitional provisions in regs. 10-14)

12 Use for services of the Crown.

The provisions of the First Schedule to this Act shall have effect with respect to the use of registered designs for the services of the Crown and the rights of third parties in respect of such use.

Modifications etc. (not altering text)

C1 S. 12 extended by S.I. 1965/1536, Sch. 3

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