



# Copyright, Designs and Patents Act 1988

## 1988 CHAPTER 48

### PART III

#### DESIGN RIGHT

#### CHAPTER I

##### DESIGN RIGHT IN ORIGINAL DESIGNS

##### *Qualification for design right protection*

#### **217 Qualifying individuals and qualifying persons**

(1) In this Part—

“qualifying individual” means a citizen or subject of, or an individual habitually resident in, a qualifying country; and

“qualifying person” means a qualifying individual or a body corporate or other body having legal personality which—

- (a) is formed under the law of a part of the United Kingdom or another qualifying country, and
- (b) has in any qualifying country a place of business at which substantial business activity is carried on.

(2) References in this Part to a qualifying person include the Crown and the government of any other qualifying country.

(3) In this section “qualifying country” means—

- (a) the United Kingdom,
- (b) a country to which this Part extends by virtue of an Order under section 255,
- (c) another member State of the European Economic Community, or
- (d) to the extent that an Order under section 256 so provides, a country designated under that section as enjoying reciprocal protection.

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*Status: This is the original version (as it was originally enacted).*

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- (4) The reference in the definition of “qualifying individual” to a person’s being a citizen or subject of a qualifying country shall be construed—
  - (a) in relation to the United Kingdom, as a reference to his being a British citizen, and
  - (b) in relation to a colony of the United Kingdom, as a reference to his being a British Dependent Territories’ citizen by connection with that colony.
- (5) In determining for the purpose of the definition of “qualifying person” whether substantial business activity is carried on at a place of business in any country, no account shall be taken of dealings in goods which are at all material times outside that country.

### **218 Qualification by reference to designer**

- (1) This section applies to a design which is not created in pursuance of a commission or in the course of employment.
- (2) A design to which this section applies qualifies for design right protection if the designer is a qualifying individual or, in the case of a computer-generated design, a qualifying person.
- (3) A joint design to which this section applies qualifies for design right protection if any of the designers is a qualifying individual or, as the case may be, a qualifying person.
- (4) Where a joint design qualifies for design right protection under this section, only those designers who are qualifying individuals or qualifying persons are entitled to design right under section 215(1) (first ownership of design right: entitlement of designer).

### **219 Qualification by reference to commissioner or employer**

- (1) A design qualifies for design right protection if it is created in pursuance of a commission from, or in the course of employment with, a qualifying person.
- (2) In the case of a joint commission or joint employment a design qualifies for design right protection if any of the commissioners or employers is a qualifying person.
- (3) Where a design which is jointly commissioned or created in the course of joint employment qualifies for design right protection under this section, only those commissioners or employers who are qualifying persons are entitled to design right under section 215(2) or (3) (first ownership of design right: entitlement of commissioner or employer).

### **220 Qualification by reference to first marketing**

- (1) A design which does not qualify for design right protection under section 218 or 219 (qualification by reference to designer, commissioner or employer) qualifies for design right protection if the first marketing of articles made to the design—
  - (a) is by a qualifying person who is exclusively authorised to put such articles on the market in the United Kingdom, and
  - (b) takes place in the United Kingdom, another country to which this Part extends by virtue of an Order under section 255, or another member State of the European Economic Community.

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- (2) If the first marketing of articles made to the design is done jointly by two or more persons, the design qualifies for design right protection if any of those persons meets the requirements specified in subsection (1)(a).
- (3) In such a case only the persons who meet those requirements are entitled to design right under section 215(4) (first ownership of design right: entitlement of first marketer of articles made to the design).
- (4) In subsection (1)(a) “exclusively authorised” refers—
  - (a) to authorisation by the person who would have been first owner of design right as designer, commissioner of the design or employer of the designer if he had been a qualifying person, or by a person lawfully claiming under such a person, and
  - (b) to exclusivity capable of being enforced by legal proceedings in the United Kingdom.

## **221 Power to make further provision as to qualification**

- (1) Her Majesty may, with a view to fulfilling an international obligation of the United Kingdom, by Order in Council provide that a design qualifies for design right protection if such requirements as are specified in the Order are met.
- (2) An Order may make different provision for different descriptions of design or article; and may make such consequential modifications of the operation of sections 215 (ownership of design right) and sections 218 to 220 (other means of qualification) as appear to Her Majesty to be appropriate.
- (3) A statutory instrument containing an Order in Council under this section shall be subject to annulment in pursuance of a resolution of either House of Parliament.