



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

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), 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),

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Changes to legislation: There are currently no known outstanding effects for the Copyright, Designs and Patents Act 1988, Section 238. (See end of Document for details)

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)

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