



Copyright, Designs and Patents Act 1988

1988 CHAPTER 48

PART IV

REGISTERED DESIGNS

Amendments of the Registered Designs Act 1949

269 Duration of right in registered design.

(1) For section 8 of the ^{M1}Registered Designs Act 1949 (period of right) substitute—

“8 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—
 - (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 had not expired shall be treated as an infringement, and

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- (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.
- (5) Where it is shown that a registered design—
- (a) was at the time it was registered a corresponding design in relation to an artistic work in which copyright subsists, and
 - (b) by reason of a previous use of that work would not have been registrable but for section 6(4) of this Act (registration despite certain prior applications of design),
- the right in the registered design expires when the copyright in that work expires, if that is earlier than the time at which it would otherwise expire, and it may not thereafter be renewed.
- (6) The above provisions have effect subject to the proviso to section 4(1) (registration of same design in respect of other articles, &c.).

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.

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.

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- (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 an article 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 the article 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.”.
- (2) The above amendment does not apply in relation to the right in a design registered in pursuance of an application made before the commencement of this Part.

Marginal Citations

M1 1949 c. 88.

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