

# **INTELLECTUAL PROPERTY BILL [HL]**

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## **EXPLANATORY NOTES ON COMMONS AMENDMENTS**

### **INTRODUCTION**

1. These Explanatory Notes relate to the Commons Amendments to the Intellectual Property Bill [HL], as brought from the House of Commons on 12th March 2014. These notes have been prepared by the Department for Business, Innovation and Skills in order to assist the reader of the Bill and to help inform debate on the Commons Amendments. They do not form part of the Bill and have not been endorsed by Parliament.
2. These Notes, like the Commons Amendments themselves, refer to Bill 102, the Bill as first printed for the Commons.
3. These notes need to be read in conjunction with the Commons Amendments and the text of the Bill. They are not, and are not meant to be, a comprehensive description of the effect of the Commons amendments.
4. All amendments described below have been proposed by the Government.

### **COMMENTARY ON COMMONS AMENDMENTS**

#### ***Commons Amendments to Part 1 – Design***

##### **Commons Amendments 1-3**

5. Commons Amendments 1 to 3 would amend clause 3 which itself simplifies the criteria under which individuals or businesses may be eligible for the UK unregistered design right under the Copyright Designs and Patents Act 1988 (CDPA). These Amendments would have the effect of ensuring that design right protection is limited only to the nationals of those countries which themselves have reciprocal protection arrangements with the UK.
6. Commons Amendment 2 would ensure that the eligibility criteria for businesses are retained, so that they must not only carry on their business in a “qualifying country” (as defined in section 217(2) of the CDPA), but must also be legally formed in any “qualifying country”.

7. Commons Amendment 3 would ensure that the eligibility criteria based on first marketing an article in the UK and EU will only apply if such marketing has been carried out by individuals or businesses falling within the term “qualifying person”, as defined in section 217(1) of the CDPA and amended by Commons Amendment 2.
8. Commons Amendment 1 is consequential on Commons Amendments 2 and 3, and would ensure that employers are included in the list of those who may qualify for design right.

**Commons Amendments 4, 6, 8, 11 and 12**

9. Commons Amendments 4, 6, 8, 11, and 12 would amend clause 13 which introduces a new criminal sanction for the copying, without permission, of a registered design. Clause 13 inserts new sections 35ZA, 35ZB, 35ZC and 35ZD into the Registered Designs Act 1949 (RDA). These Amendments would have the effect of ensuring that it is clear on the face of the legislation that the act of copying must be a considered act, and that it does not include unconscious copying.
10. Commons Amendment 4 would clarify that the type of copying to which the criminal sanction applies is intentional.
11. Commons Amendments 6 and 8 are consequential on Commons Amendment 4 and would clarify that secondary acts, such as importing copied products, are only subject to a criminal sanction when the act of copying is intentional.
12. Commons Amendments 11 and 12 are also consequential on Commons Amendment 4. They would clarify that rules relating to the forfeiture of products under the criminal sanction apply only where the products have been copied intentionally.

**Commons Amendments 5, 7, 9 and 10**

13. Commons Amendments 5, 7, 9, and 10 would also amend clause 13, specifically, defining how close to the original the copied design would need to be, for the criminal sanction to apply. The Amendments describe the degree of similarity between the original design and the copy – where the latter is not an exact copy - by reference to terms already used in the RDA, and which are therefore familiar to industry and the legal profession.
14. Commons Amendment 5 would ensure that where the copy of a design is not an exact copy, the criminal sanction will also apply if the features of the copy “differ only in immaterial details” from the original design.
15. Commons Amendments 7 and 9 are consequential on Commons Amendment 5 and apply to secondary acts of copying such as importing copied products. The Amendments would mean that the criminal sanction will extend beyond exact copies, to those copied products whose features “differ only in immaterial details” from the original design.
16. Commons Amendment 10 is also consequential on Commons Amendment 5. It would

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as brought from the House of Commons on 12th March 2014 [HL Bill 94]*

ensure that copied products can only be subject to forfeiture if they are exact copies or have features which “different only in immaterial details” from the original design.

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