

Additional feedback sought

We are seeking feedback on the following potential formal requirements, which are currently *not* included in the proposed draft *Designs Formal Requirements Instrument*.

However, depending on the feedback we receive, we may consider these as options for reform in the future.

We would like to assist customers where representations and statements of newness and distinctiveness (SoNDs) are unclear and where they include unnecessary information.

The information in italics provides reasoning as to why we believe including the formal requirements below at the application for registration stage may benefit customers and clarity.

Item 1: A representation must not contain any text which disclaims parts of the design which are clearly present unless the representation is labelled as a reference or environmental view.

For example:

Front view with the solid lines *umbrella* handle is disclaimed and does not form part of the design

This type of information should not be provided in the representations. Additionally, we are unable to “disclaim” a feature or features when the overall impression of a design is being assessed. Customers should be using the SoND to identify particular visual feature(s), depicted in the representation(s), as being new and distinctive and the focus of the design.

Item 2: A statement of newness and distinctiveness must appear as such on a fair reading and must not concern a matter other than the functions mentioned in s 19(2)(b) of the Act for a statement of newness and distinctiveness.

For example:

A design application with the following Statement of Newness and Distinctiveness:

“The product is a unique invention which offers many different benefits for users. The chemical composition of the materials used is unique and makes the product stronger. It is also biodegradable”

The sentence is irrelevant when considering what the design is, including what are the new and distinctive visual features that are the focus of the design. The detail is unnecessary and irrelevant for the purposes of a SoND.

Whilst we appreciate that a SoND is relevant to the evaluation of distinctiveness under section 19, and is submitted together with an application, we can see value in trying to further assist applicants with this detail at this stage. Note also that SoNDs cannot be amended after registration. We have noted that applicants will likely desire flexibility for drafting of their SoNDs.