

*Status: Point in time view as at 01/02/1991.*

**Changes to legislation:** There are currently no known outstanding effects for the Copyright, Designs and Patents Act 1988, Cross Heading: Effect of registration, &c.. (See end of Document for details)

## SCHEDULES

### SCHEDULE 4

#### THE REGISTERED DESIGNS ACT 1949 AS AMENDED ARRANGEMENT OF SECTIONS

##### **Modifications etc. (not altering text)**

**C1** Sch. 4 extended (with modifications) (Isle of Man) (9.12.2001) by [S.I. 2001/3678](#), art. 3, [Sch. 3](#)

#### *Effect of registration, &c.*

##### *Right given by registration.*

- 7 (1) The registration of a design under this Act gives the registered proprietor the exclusive right—
- (a) to make or import—
    - (i) for sale or hire, or
    - (ii) for use for the purposes of a trade or business, or
  - (b) to sell, hire or offer or expose for sale or hire,
- an article in respect of which the design is registered and to which that design or a design not substantially different from it has been applied.
- (2) The right in the registered design is infringed by a person who without the licence of the registered proprietor does anything which by virtue of subsection (1) is the exclusive right of the proprietor.
- (3) The right in the registered design is also infringed by a person who, without the licence of the registered proprietor makes anything for enabling any such article to be made, in the United Kingdom or elsewhere, as mentioned in subsection (1).
- (4) The right in the registered design is also infringed by a person who without the licence of the registered proprietor—
- (a) does anything in relation to a kit that would be an infringement if done in relation to the assembled article (see subsection (1)), or
  - (b) makes anything for enabling a kit to be made or assembled, in the United Kingdom or elsewhere, if the assembled article would be such an article as is mentioned in subsection (1);
- and for this purpose a “kit” means a complete or substantially complete set of components intended to be assembled into an article.
- (5) No proceedings shall be taken in respect of an infringement committed before the date on which the certificate of registration of the design under this Act is granted.
- (6) The right in a registered design is not infringed by the reproduction of a feature of the design which, by virtue of section 1(1)(b), is left out of account in determining whether the design is registrable.

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*Duration of right in registered design.*

- 8 (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
  - (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.).

*Restoration of lapsed right in design.*

- 8A (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

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- (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.

*Effect of order for restoration of right.*

- 8B (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.
- (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.

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*Exemption of innocent infringer from liability for damages.*

- 9 (1) In proceedings for the infringement of the right in a registered design damages shall not be awarded against a defendant who proves that at the date of the infringement he was not aware, and had no reasonable ground for supposing, that the design was registered; and a person shall not be deemed to have been aware or to have had reasonable grounds for supposing as aforesaid by reason only of the marking of an article with the word “registered” or any abbreviation thereof, or any word or words expressing or implying that the design applied to the article has been registered, unless the number of the design accompanied the word or words or the abbreviation in question.
- (2) Nothing in this section shall affect the power of the court to grant an injunction in any proceedings for infringement of the right in a registered design.

*Compulsory licence in respect of registered design.*

- 10 (1) At any time after a design has been registered any person interested may apply to the registrar for the grant of a compulsory licence in respect of the design on the ground that the design is not applied in the United Kingdom by any industrial process or means to the article in respect of which it is registered to such an extent as is reasonable in the circumstances of the case; and the registrar may make such order on the application as he thinks fit.
- (2) An order for the grant of a licence shall, without prejudice to any other method of enforcement, have effect as if it were a deed executed by the registered proprietor and all other necessary parties, granting a licence in accordance with the order.
- (3) No order shall be made under this section which would be at variance with any treaty, convention, arrangement or engagement applying to the United Kingdom and any convention country.
- (4) An appeal shall lie from any order of the registrar under this section.

*Cancellation of registration.*

- 11 (1) The registrar may, upon a request made in the prescribed manner by the registered proprietor, cancel the registration of a design.
- (2) At any time after a design has been registered any person interested may apply to the registrar for the cancellation of the registration of the design on the ground that the design was not, at the date of the registration thereof, new..., or on any other ground on which the registrar could have refused to register the design; and the registrar may make such order on the application as he thinks fit.
- (3) At any time after a design has been registered, any person interested may apply to the registrar for the cancellation of the registration on the ground that—
- (a) the design was at the time it was registered a corresponding design in relation to an artistic work in which copyright subsisted, and
  - (b) the right in the registered design has expired in accordance with section 8(4) of this Act (expiry of right in registered design on expiry of copyright in artistic work);
- and the registrar may make such order on the application as he thinks fit.
- (4) A cancellation under this section takes effect—

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- (a) in the case of cancellation under subsection (1), from the date of the registrar's decision,
  - (b) in the case of cancellation under subsection (2), from the date of registration,
  - (c) in the case of cancellation under subsection (3), from the date on which the right in the registered design expired,
- or, in any case, from such other date as the registrar may direct.
- (5) An appeal lies from any order of the registrar under this section.

*Powers exercisable for protection of the public interest.*

- 11A (1) Where a report of the Monopolies and Mergers Commission has been laid before Parliament containing conclusions to the effect—
- (a) on a monopoly reference, that a monopoly situation exists and facts found by the Commission operate or may be expected to operate against the public interest,
  - (b) on a merger reference, that a merger situation qualifying for investigation has been created and the creation of the situation, or particular elements in or consequences of it specified in the report, operate or may be expected to operate against the public interest,
  - (c) on a competition reference, that a person was engaged in an anti-competitive practice which operated or may be expected to operate against the public interest, or
  - (d) on a reference under section 11 of the Competition Act 1980 (reference of public bodies and certain other persons), that a person is pursuing a course of conduct which operates against the public interest,
- the appropriate Minister or Ministers may apply to the registrar to take action under this section.
- (2) Before making an application the appropriate Minister or Ministers shall publish, in such manner as he or they think appropriate, a notice describing the nature of the proposed application and shall consider any representations which may be made within 30 days of such publication by persons whose interests appear to him or them to be affected.
- (3) If on an application under this section it appears to the registrar that the matters specified in the Commission's report as being those which in the Commission's opinion operate, or operated or may be expected to operate, against the public interest include—
- (a) conditions in licences granted in respect of a registered design by its proprietor restricting the use of the design by the licensee or the right of the proprietor to grant other licences, or
  - (b) a refusal by the proprietor of a registered design to grant licences on reasonable terms,
- he may by order cancel or modify any such condition or may, instead or in addition, make an entry in the register to the effect that licences in respect of the design are to be available as of right.
- (4) The terms of a licence available by virtue of this section shall, in default of agreement, be settled by the registrar on an application by the person requiring the licence; and terms so settled shall authorise the licensee to do everything which would be an infringement of the right in the registered design in the absence of a licence.

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- (5) Where the terms of a licence are settled by the registrar, the licence has effect from the date on which the application to him was made.
- (6) An appeal lies from any order of the registrar under this section.
- (7) In this section “the appropriate Minister or Ministers” means the Minister or Ministers to whom the report of the Monopolies and Mergers Commission was made.

*Undertaking to take licence of right in infringement proceedings.*

- 11B (1) If in proceedings for infringement of the right in a registered design in respect of which a licence is available as of right under section 11A of this Act the defendant undertakes to take a licence on such terms as may be agreed or, in default of agreement, settled by the registrar under that section—
- (a) no injunction shall be granted against him, and
  - (b) the amount recoverable against him by way of damages or on an account of profits shall not exceed double the amount which would have been payable by him as licensee if such a licence on those terms had been granted before the earliest infringement.
- (2) An undertaking may be given at any time before final order in the proceedings, without any admission of liability.
- (3) Nothing in this section affects the remedies available in respect of an infringement committed before licences of right were available.

*Use for services of the Crown.*

- 12 The provisions of the First Schedule to this Act shall have effect with respect to the use of registered designs for the services of the Crown and the rights of third parties in respect of such use.

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