

*Status: Point in time view as at 01/02/1991.*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: Legal proceedings and appeals. (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](#)

#### *Legal proceedings and appeals*

##### *Certificate of contested validity of registration.*

- 25 (1) If in any proceedings before the court the validity of the registration of a design is contested, and it is found by the court that the design is validly registered, the court may certify that the validity of the registration of the design was contested in those proceedings.
- (2) Where any such certificate has been granted, then if in any subsequent proceedings before the court for infringement of the right in the registered design or for cancellation of the registration of the design, a final order or judgment is made or given in favour of the registered proprietor, he shall, unless the court otherwise directs, be entitled to his costs as between solicitor and client:

Provided that this subsection shall not apply to the costs of any appeal in any such proceedings as aforesaid.

##### *Remedy for groundless threats of infringement proceedings.*

- 26 (1) Where any person (whether entitled to or interested in a registered design or an application for registration of a design or not) by circulars, advertisements or otherwise threatens any other person with proceedings for infringement of the right in a registered design, any person aggrieved thereby may bring an action against him for any such relief as is mentioned in the next following subsection.
- (2) Unless in any action brought by virtue of this section the defendant proves that the acts in respect of which proceedings were threatened constitute or, if done, would constitute, an infringement of the right in a registered design the registration of which is not shown by the plaintiff to be invalid, the plaintiff shall be entitled to the following relief, that is to say:—
- a declaration to the effect that the threats are unjustifiable;
  - an injunction against the continuance of the threats; and
  - such damages, if any, as he has sustained thereby.

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- (2A) Proceedings may not be brought under this section in respect of a threat to bring proceedings for an infringement alleged to consist of the making or importing of anything.
- (3) For the avoidance of doubt it is hereby declared that a mere notification that a design is registered does not constitute a threat of proceedings within the meaning of this section.

*The court.*

- 27 (1) In this Act “the court” means—
- (a) in England and Wales, the High Court or any patents county court having jurisdiction by virtue of an order under section 287 of the Copyright, Designs and Patents Act 1988,
  - (b) in Scotland, the Court of Session, and
  - (c) in Northern Ireland, the High Court.
- (2) Provision may be made by rules of court with respect to proceedings in the High Court in England and Wales for references and applications under this Act to be dealt with by such judge of that court as the Lord Chancellor may select for the purpose.

*The Appeal Tribunal.*

- 28 (1) Any appeal from the registrar under this Act shall lie to the Appeal Tribunal.
- (2) The Appeal Tribunal shall consist of—
- (a) one or more judges of the High Court nominated by the Lord Chancellor, and
  - (b) one judge of the Court of Session nominated by the Lord President of that Court.
- (2A) At any time when it consists of two or more judges, the jurisdiction of the Appeal Tribunal—
- (a) where in the case of any particular appeal the senior of those judges so directs, shall be exercised in relation to that appeal by both of the judges, or (if there are more than two) by two of them, sitting together, and
  - (b) in relation to any appeal in respect of which no such direction is given, may be exercised by any one of the judges;
- and, in the exercise of that jurisdiction, different appeals may be heard at the same time by different judges.
- (3) The expenses of the Appeal Tribunal shall be defrayed and the fees to be taken therein may be fixed as if the Tribunal were a court of the High Court.
- (4) The Appeal Tribunal may examine witnesses on oath and administer oaths for that purpose.
- (5) Upon any appeal under this Act the Appeal Tribunal may by order award to any party such costs or expenses as the Tribunal may consider reasonable and direct how and by what parties the costs or expenses are to be paid; and any such order may be enforced—
- (a) in England and Wales or Northern Ireland, in the same way as an order of the High Court;

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(b) in Scotland, in the same way as a decree for expenses granted by the Court of Session.

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- (7) Upon any appeal under this Act the Appeal Tribunal may exercise any power which could have been exercised by the registrar in the proceeding from which the appeal is brought.
- (8) Subject to the foregoing provisions of this section the Appeal Tribunal may make rules for regulating all matters relating to proceedings before it under this Act, including right of audience.
- (8A) At any time when the Appeal Tribunal consists of two or more judges, the power to make rules under subsection (8) of this section shall be exercisable by the senior of those judges:
- Provided that another of those judges may exercise that power if it appears to him that it is necessary for rules to be made and that the judge (or, if more than one, each of the judges) senior to him is for the time being prevented by illness, absence or otherwise from making them.
- (9) An appeal to the Appeal Tribunal under this Act shall not be deemed to be a proceeding in the High Court.
- (10) In this section “the High Court” means the High Court in England and Wales; and for the purposes of this section the seniority of judges shall be reckoned by reference to the dates on which they were appointed judges of that court or the Court of Session.

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