

Changes to legislation: Registered Designs Act 1949 is up to date with all changes known to be in force on or before 21 January 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details) View outstanding changes

SCHEDULES

[^{F1}SCHEDULE A1

GROUND FOR REFUSAL OF REGISTRATION IN RELATION TO EMBLEMS ETC.

Textual Amendments

- F1** Sch. A1 (paras. 1-5) inserted (9.12.2001) by [S.I. 2001/3949](#), **reg. 3** (with transitional provisions in [regs. 10-14](#))

Grounds for refusal in relation to certain emblems etc.

- 1 (1) A design shall be refused registration under this Act if it involves the use of—
- the Royal arms, or any of the principal armorial bearings of the Royal arms, or any insignia or device so nearly resembling the Royal arms or any such armorial bearing as to be likely to be mistaken for them or it;
 - a representation of the Royal crown or any of the Royal flags;
 - a representation of Her Majesty or any member of the Royal family, or any colourable imitation thereof; or
 - words, letters or devices likely to lead persons to think that the applicant either has or recently has had Royal patronage or authorisation;
- unless it appears to the registrar that consent for such use has been given by or on behalf of Her Majesty or (as the case may be) the relevant member of the Royal family.
- (2) A design shall be refused registration under this Act if it involves the use of—
- the national flag of the United Kingdom (commonly known as the Union Jack); or
 - the flag of England, Wales, Scotland, Northern Ireland or the Isle of Man, and it appears to the registrar that the use would be misleading or grossly offensive.
- (3) A design shall be refused registration under this Act if it involves the use of—
- arms to which a person is entitled by virtue of a grant of arms by the Crown; or
 - insignia so nearly resembling such arms as to be likely to be mistaken for them;
- unless it appears to the registrar that consent for such use has been given by or on behalf of the person concerned and the use is not in any way contrary to the law of arms.
- (4) A design shall be refused registration under this Act if it involves the use of a controlled representation within the meaning of the Olympic Symbol etc. (Protection) Act 1995 unless it appears to the registrar that—
- the application is made by the person for the time being appointed under section 1(2) of the Olympic Symbol etc. (Protection) Act 1995 (power of

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- Secretary of State to appoint a person as the proprietor of the Olympics association right); or
- (b) consent for such use has been given by or on behalf of the person mentioned in paragraph (a) above.

Grounds for refusal in relation to emblems etc. of Paris Convention countries

- 2 (1) A design shall be refused registration under this Act if it involves the use of the flag of a Paris Convention country unless—
- (a) the authorisation of the competent authorities of that country has been given for the registration; or
- (b) it appears to the registrar that the use of the flag in the manner proposed is permitted without such authorisation.
- (2) A design shall be refused registration under this Act if it involves the use of the armorial bearings or any other state emblem of a Paris Convention country which is protected under the Paris Convention unless the authorisation of the competent authorities of that country has been given for the registration.
- (3) A design shall be refused registration under this Act if—
- (a) the design involves the use of an official sign or hallmark adopted by a Paris Convention country and indicating control and warranty;
- (b) the sign or hallmark is protected under the Paris Convention; and
- (c) the design could be applied to or incorporated in goods of the same, or a similar, kind as those in relation to which the sign or hallmark indicates control and warranty;
- unless the authorisation of the competent authorities of that country has been given for the registration.
- (4) The provisions of this paragraph as to national flags and other state emblems, and official signs or hallmarks, apply equally to anything which from a heraldic point of view imitates any such flag or other emblem, or sign or hallmark.
- (5) Nothing in this paragraph prevents the registration of a design on the application of a national of a country who is authorised to make use of a state emblem, or official sign or hallmark, of that country, notwithstanding that it is similar to that of another country.

Grounds for refusal in relation to emblems etc. of certain international organisations

- 3 (1) This paragraph applies to—
- (a) the armorial bearings, flags or other emblems; and
- (b) the abbreviations and names,
- of international intergovernmental organisations of which one or more Paris Convention countries are members.
- (2) A design shall be refused registration under this Act if it involves the use of any such emblem, abbreviation or name which is protected under the Paris Convention unless—
- (a) the authorisation of the international organisation concerned has been given for the registration; or

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- (b) it appears to the registrar that the use of the emblem, abbreviation or name in the manner proposed—
 - (i) is not such as to suggest to the public that a connection exists between the organisation and the design; or
 - (ii) is not likely to mislead the public as to the existence of a connection between the user and the organisation.
- (3) The provisions of this paragraph as to emblems of an international organisation apply equally to anything which from a heraldic point of view imitates any such emblem.
- (4) Nothing in this paragraph affects the rights of a person whose *bona fide* use of the design in question began before 4th January 1962 (when the relevant provisions of the Paris Convention entered into force in relation to the United Kingdom).

Paragraphs 2 and 3: supplementary

- 4 (1) For the purposes of paragraph 2 above state emblems of a Paris Convention country (other than the national flag), and official signs or hallmarks, shall be regarded as protected under the Paris Convention only if, or to the extent that—
 - (a) the country in question has notified the United Kingdom in accordance with Article 6ter(3) of the Convention that it desires to protect that emblem, sign or hallmark;
 - (b) the notification remains in force; and
 - (c) the United Kingdom has not objected to it in accordance with Article 6ter(4) or any such objection has been withdrawn.
- (2) For the purposes of paragraph 3 above the emblems, abbreviations and names of an international organisation shall be regarded as protected under the Paris Convention only if, or to the extent that—
 - (a) the organisation in question has notified the United Kingdom in accordance with Article 6ter(3) of the Convention that it desires to protect that emblem, abbreviation or name;
 - (b) the notification remains in force; and
 - (c) the United Kingdom has not objected to it in accordance with Article 6ter(4) or any such objection has been withdrawn.
- (3) Notification under Article 6ter(3) of the Paris Convention shall have effect only in relation to applications for the registration of designs made more than two months after the receipt of the notification.

Interpretation

- 5 In this Schedule—
 - “a Paris Convention country” means a country, other than the United Kingdom, which is a party to the Paris Convention; and
 - “the Paris Convention” means the Paris Convention for the Protection of Industrial Property of 20th March 1883.]

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FIRST SCHEDULE

Section 12.

PROVISIONS AS TO THE USE OF REGISTERED DESIGNS FOR THE SERVICES OF THE CROWN AND AS TO THE RIGHTS OF THIRD PARTIES IN RESPECT OF SUCH USE

Use of registered designs for services of the Crown.

- 1 (1) Notwithstanding anything in this Act, any Government department, and any person authorised in writing by a Government department, may use any registered design for the services of the Crown in accordance with the following provisions of this paragraph.
 - (2) If and so far as the design has before the date of registration thereof been duly recorded by or applied by or on behalf of a Government department otherwise than in consequence of the communication of the design directly or indirectly by the registered proprietor or any person from whom he derives title, any use of the design by virtue of this paragraph may be made free of any royalty or other payment to the registered proprietor.
 - (3) If and so far as the design has not been so recorded or applied as aforesaid, any use of the design made by virtue of this paragraph at any time after the date of registration thereof, or in consequence of any such communication as aforesaid, shall be made upon such terms as may be agreed upon, either before or after the use, between the Government department and the registered proprietor with the approval of the Treasury, or as may in default of agreement be determined by the court on a reference under paragraph 3 of this Schedule.
 - (4) The authority of a Government department in respect of a design may be given under this paragraph either before or after the design is registered and either before or after the acts in respect of which the authority is given are done, and may be given to any person whether or not he is authorised directly or indirectly by the registered proprietor to use the design.
 - (5) Where any use of a design is made by or with the authority of a Government department under this paragraph, then, unless it appears to the department that it would be contrary to the public interest so to do, the department shall notify the registered proprietor as soon as practicable after the use is begun, and furnish him with such information as to the extent of the use as he may from time to time require.
- [^{F2}(6) For the purposes of this and the next following paragraph “the services of the Crown” shall be deemed to include—
- (a) the supply to the government of any country outside the United Kingdom, in pursuance of an agreement or arrangement between Her Majesty’s Government in the United Kingdom and the government of that country, of [^{F3}products] required—
 - (i) for the defence of that country; or
 - (ii) for the defence of any other country whose government is party to any agreement or arrangement with Her Majesty’s said Government in respect of defence matters;
 - (b) the supply to the United Nations, or to the government of any country belonging to that organisation, in pursuance of an agreement or arrangement between Her Majesty’s Government and that organisation or government,

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of [F³products] required for any armed forces operating in pursuance of a resolution of that organisation or any organ of that organisation;

and the power of a Government department or a person authorised by a Government department under this paragraph to use a design shall include power to sell to any such government or to the said organisation any [F³products] the supply of which is authorised by this sub-paragraph, and to sell to any person any [F³products] made in the exercise of the powers conferred by this paragraph which are no longer required for the purpose for which they were made.]

- (7) The purchaser of any [F³products] sold in the exercise of powers conferred by this paragraph, and any person claiming through him, shall have power to deal with them in the same manner as if the rights in the registered design were held on behalf of His Majesty.

Textual Amendments

F2 Para. 1(6) substituted by [Defence Contracts Act 1958 \(c. 38\), s. 1\(1\)\(4\)](#)

F3 Words in Sch. 1 para. 1(6)(7) substituted (9.12.2001) by [S.I. 2001/3949, reg. 9\(1\), Sch. 1 para. 15\(2\)](#) (with transitional provisions in [regs. 10-14](#))

Modifications etc. (not altering text)

C1 Paras. 1-3 extended by [S.I. 1965/1536, Sch. 3](#)

C2 Para. 1(3) modified by [Atomic Energy Authority \(Weapons Group\) Act 1973 \(c. 4\), s. 5\(2\)](#)

Rights of third parties in respect of Crown use.

- 2 (1) In relation to any use of a registered design, or a design in respect of which an application for registration is pending, made for the services of the Crown—
- (a) by a Government department or a person authorised by a Government department under the last foregoing paragraph; or
 - (b) by the registered proprietor or applicant for registration to the order of a Government department,
- the provisions of any licence, assignment or agreement made, whether before or after the commencement of this Act, between the registered proprietor or applicant for registration or any person who derives title from him or from whom he derives title and any person other than a Government department shall be of no effect so far as those provisions restrict or regulate the use of the design, or any model, document or information relating thereto, or provide for the making of payments in respect of any such use, or calculated by reference thereto; and the reproduction or publication of any model or document in connection with the said use shall not be deemed to be an infringement of any copyright [F⁴ or [F⁵national unregistered design right]] subsisting in the model or document.
- (2) Where an exclusive licence granted otherwise than for royalties or other benefits determined by reference to the use of the design is in force under the registered design then—
- (a) in relation to any use of the design which, but for the provisions of this and the last foregoing paragraph, would constitute an infringement of the rights of the licensee, sub-paragraph (3) of the last foregoing paragraph shall have effect as if for the reference to the registered proprietor there were substituted a reference to the licensee; and

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- (b) in relation to any use of the design by the licensee by virtue of an authority given under the last foregoing paragraph, that paragraph shall have effect as if the said sub-paragraph (3) were omitted.
- (3) Subject to the provisions of the last foregoing sub-paragraph, where the registered design or the right to apply for or obtain registration of the design has been assigned to the registered proprietor in consideration of royalties or other benefits determined by reference to the use of the design, then—
- (a) in relation to any use of the design by virtue of paragraph 1 of this Schedule, sub-paragraph (3) of that paragraph shall have effect as if the reference to the registered proprietor included a reference to the assignor, and any sum payable by virtue of that sub-paragraph shall be divided between the registered proprietor and the assignor in such proportion as may be agreed upon between them or as may in default of agreement be determined by the court on a reference under the next following paragraph; and
- (b) in relation to any use of the design made for the services of the Crown by the registered proprietor to the order of a Government department, sub-paragraph (3) of paragraph 1 of this Schedule shall have effect as if that use were made by virtue of an authority given under that paragraph.
- (4) Where, under sub-paragraph (3) of paragraph 1 of this Schedule, payments are required to be made by a Government department to a registered proprietor in respect of any use of a design, any person being the holder of an exclusive licence under the registered design (not being such a licence as is mentioned in sub-paragraph (2) of this paragraph) authorising him to make that use of the design shall be entitled to recover from the registered proprietor such part (if any) of those payments as may be agreed upon between that person and the registered proprietor, or as may in default of agreement be determined by the court under the next following paragraph to be just having regard to any expenditure incurred by that person—
- (a) in developing the said design; or
- (b) in making payments to the registered proprietor, other than royalties or other payments determined by reference to the use of the design, in consideration of the licence;
- and if, at any time before the amount of any such payment has been agreed upon between the Government department and the registered proprietor, that person gives notice in writing of his interest to the department, any agreement as to the amount of that payment shall be of no effect unless it is made with his consent.
- (5) In this paragraph “exclusive licence” means a licence from a registered proprietor which confers on the licensee, or on the licensee and persons authorised by him, to the exclusion of all other persons (including the registered proprietor), any right in respect of the registered design.

Textual Amendments

- F4** Words inserted by [Copyright, Designs and Patents Act 1988 \(c. 48, SIF 67A\)](#), s. 272, **Sch. 3 para. 37(2)**
- F5** Words in Sch. 1 para. 2(1) substituted (9.12.2001) by [S.I. 2001/3949, reg. 9\(1\)](#), **Sch. 1 para. 15(3)** (with transitional provisions in [regs. 10-14](#))

Modifications etc. (not altering text)

- C3** Para. 2 amended by [Defence Contracts Act 1958 \(c. 38\)](#), s. **1(3)(4)**
- C4** Paras. 1-3 extended by [S.I. 1965/1536](#), **Sch. 3**

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C5 By S.I. 1987/1497, **reg. 9(2) para. 2** Table B it is provided that Sch. 1 para. 2(1) shall apply as if there were inserted at the end thereof the words, “or of any topography right”

Compensation for loss of profit.

[^{F6}2A (1) Where Crown use is made of a registered design, the government department concerned shall pay—

- (a) to the registered proprietor, or
- (b) if there is an exclusive licence in force in respect of the design, to the exclusive licensee,

compensation for any loss resulting from his not being awarded a contract to supply the [^{F7}products] to which the design is [^{F7}or in which it is incorporated].

(2) Compensation is payable only to the extent that such a contract could have been fulfilled from his existing manufacturing capacity; but is payable notwithstanding the existence of circumstances rendering him ineligible for the award of such a contract.

(3) In determining the loss, regard shall be had to the profit which would have been made on such a contract and to the extent to which any manufacturing capacity was underused.

(4) No compensation is payable in respect of any failure to secure contracts for the supply of [^{F7}products] to which the design is [^{F7}or in which it is incorporated] otherwise than for the services of the Crown.

(5) The amount payable under this paragraph shall, if not agreed between the registered proprietor or licensee and the government department concerned with the approval of the Treasury, be determined by the court on a reference under paragraph 3; and it is in addition to any amount payable under paragraph 1 or 2 of this Schedule.

(6) In this paragraph—

“Crown use”, in relation to a design, means the doing of anything by virtue of paragraph 1 which would otherwise be an infringement of the right in the design; and

“the government department concerned”, in relation to such use, means the government department by whom or on whose authority the act was done.]

Textual Amendments

F6 Sch. 1 para. 2A inserted by [Copyright, Designs and Patents Act 1988 \(c. 48, SIF 67A\)](#), **s. 271(1)**

F7 Words in Sch. 1 para. 2A(1)(4) substituted (9.12.2001) by [S.I. 2001/3949, reg. 9\(1\)](#), **Sch. 1 para. 15(4) (a)(b)** (with transitional provisions in [regs. 10-14](#))

Reference of disputes as to Crown use.

3 [^{F8}(1) Any dispute as to—

- (a) the exercise by a Government department, or a person authorised by a Government department, of the powers conferred by paragraph 1 of this Schedule,
- (b) terms for the use of a design for the services of the Crown under that paragraph,

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- (c) the right of any person to receive any part of a payment made under paragraph 1(3), or
- (d) the right of any person to receive a payment under paragraph 2A,
- may be referred to the court by either party to the dispute.]
- (2) In any proceedings under this paragraph to which a Government department are a party, the department may—
- (a) if the registered proprietor is a party to the proceedings [F9 and the department are a relevant person within the meaning of section 20 of this Act], apply for [F10 invalidation] of the registration of the design upon any ground upon which the registration of a design may be [F10 declared invalid] on an application to the court under section twenty of this Act;
- (b) in any case [F11 and provided that the department would be the relevant person within the meaning of section 20 of this Act if they had made an application on the grounds for invalidity being raised], put in issue the validity of the registration of the design without applying for its [F10 invalidation].
- (3) If in such proceedings as aforesaid any question arises whether a design has been recorded or applied as mentioned in paragraph 1 of this Schedule, and the disclosure of any document recording the design, or of any evidence of the application thereof, would in the opinion of the department be prejudicial to the public interest, the disclosure may be made confidentially to counsel for the other party or to an independent expert mutually agreed upon.
- (4) In determining under this paragraph any dispute between a Government department and any person as to terms for the use of a design for the services of the Crown, the court shall have regard to any benefit or compensation which that person or any person from whom he derives title may have received, or may be entitled to receive, directly or indirectly from any Government department in respect of the design in question.
- (5) In any proceedings under this paragraph the court may at any time order the whole proceedings or any question or issue of fact arising therein to be referred to a special or official referee or an arbitrator on such terms as the court may direct; and references to the court in the foregoing provisions of this paragraph shall be construed accordingly.

Textual Amendments

- F8** Sch. 1 para. 3(1) substituted by [Copyright, Designs and Patents Act 1988 \(c. 48, SIF 67A\)](#), s. 271(2)
- F9** Words in Sch. 1 para. 3(2)(a) inserted (9.12.2001) by [S.I. 2001/3949](#), reg. 9(1), [Sch. 1 para. 15\(5\)\(a\)](#) (with transitional provisions in [regs. 10-14](#))
- F10** Words in Sch. 1 para. 3(2)(a)(b) substituted (9.12.2001) by [S.I. 2001/3949](#), reg. 9(1), [Sch. 1 para. 15\(5\)\(b\)\(c\)\(6\)\(b\)](#) (with transitional provisions in [regs. 10-14](#))
- F11** Words in Sch. 1 para. 3(2)(b) substituted (9.12.2001) by [S.I. 2001/3949](#), reg. 9(1), [Sch. 1 para. 15\(6\)\(a\)](#) (with transitional provisions in [regs. 10-14](#))

Modifications etc. (not altering text)

- C6** Paras. 1-3 extended by [S.I. 1965/1536](#), [Sch. 3](#)
- C7** Sch. 1 para. 3(2)–(5) extended by [British Telecommunications Act 1981 \(c. 38, SIF 96\)](#), s. 88, [Sch. 5 para. 20\(2\)](#)

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C8 Reference to official referee to be construed (E.W.) as reference to Circuit judge discharging functions of official referee: [Courts Act 1971 \(c. 23\), s. 25\(3\)](#)

Special provisions as to Crown use during emergency.

- 4 (1) During any period of emergency within the meaning of this paragraph, the powers exercisable in relation to a design by a Government department, or a person authorised by a Government department under paragraph 1 of this Schedule shall include power to use the design for any purpose which appears to the department necessary or expedient—
- (a) for the efficient prosecution of any war in which His Majesty may be engaged;
 - (b) for the maintenance of supplies and services essential to the life of the community;
 - (c) for securing a sufficiency of supplies and services essential to the well-being of the community;
 - (d) for promoting the productivity of industry, commerce and agriculture;
 - (e) for fostering and directing exports and reducing imports, or imports of any classes, from all or any countries and for redressing the balance of trade;
 - (f) generally for ensuring that the whole resources of the community are available for use, and are used, in a manner best calculated to serve the interests of the community; or
 - (g) for assisting the relief of suffering and the restoration and distribution of essential supplies and services in any part of His Majesty’s dominions or any foreign countries that are in grave distress as the result of war;
- and any reference in this Schedule to the services of the Crown shall be construed as including a reference to the purposes aforesaid.
- (2) In this paragraph the expression “period of emergency” means [^{F12}a period] beginning on such date as may be declared by Order in Council to be the commencement, and ending on such date as may be so declared to be the termination, of a period of emergency for the purposes of this paragraph.
- [^{F13}(3) No Order in Council under this paragraph shall be submitted to Her Majesty unless a draft of it has been laid before and approved by a resolution of each House of Parliament.]

Textual Amendments

- F12** Words substituted by [Copyright, Designs and Patents Act 1988 \(c. 48, SIF 67A\), s. 272, Sch. 3 para. 37\(4\)](#)
- F13** Sch. 1 para. 4(3) substituted by [Copyright, Designs and Patents Act 1988 \(c. 48, SIF 67A\), s. 272, Sch. 3 para. 37\(5\)](#)

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[^{F14}SCHEDULE 1A

Section 12A

EUROPEAN COMMUNITY REGISTERED DESIGNS

Textual Amendments

F14 Schs. 1A, 1B inserted (31.12.2020) by [The Designs and International Trade Marks \(Amendment etc.\) \(EU Exit\) Regulations 2019 \(S.I. 2019/638\)](#), reg. 1, **Sch. 3 para. 3** (with Sch. 5 Pt. 1) (as amended by [S.I. 2020/1050](#), regs. 1(2), 23); 2020 c. 1, Sch. 5 para. 1(1)

PART 1

EXISTING REGISTERED COMMUNITY DESIGNS

Designs registered as Community designs to be treated as registered under the Act

- 1 (1) A design which, immediately before [^{F15}IP completion day], is entered in the RCD register and has been published in the Community Designs Bulletin as mentioned in Article 73(1) (an “existing registered Community design”) is to be treated on and after [^{F15}IP completion day] as if an application for its registration had been made, and it had been registered, under this Act.
- (2) A registered design which comes into being by virtue of sub-paragraph (1) is referred to in this Schedule as a “re-registered design”.
- (3) This Act applies to a re-registered design as it applies to other registered designs except as otherwise provided in this Schedule.
- (4) For the purposes of this Act—
- the date of registration of a re-registered design is the date on which the existing registered Community design from which the re-registered design derives was treated as registered under the Community Design Regulation, and
 - the date of the application of a re-registered design is the date treated, under Article 38, as the date of filing of the application for the registration of the existing registered Community design from which the re-registered design derives.
- (5) Nothing in this Act authorises the imposition of a fee, or the making of provision by rules or regulations which authorises the imposition of a fee, in respect of any matter relating to a re-registered design (see instead provision made by regulations under Schedule 4 to the European Union (Withdrawal) Act 2018).
- (6) The following provisions of this Act do not apply to a re-registered design—
- section 7A(6);
 - section 18.
- (7) In this Schedule—
- “the RCD register” means the register of registered Community designs maintained under Article 72;

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- (b) “the Community Design Regulation” means Council Regulation (EC) No 6/2002 of 12th December 2001 on Community Designs as it had effect immediately before [F15IP completion day].

Textual Amendments

F15 Words in Sch. 1A substituted in earlier amending provision S.I. 2019/638, Sch. 3 para. 3 (31.12.2020) by The Intellectual Property (Amendment etc.) (EU Exit) Regulations 2020 (S.I. 2020/1050), regs. 1(2), 21(c)(i)

Entries to be made in the register in relation to designs treated as registered under this Act

- 2 (1) The registrar must as soon as reasonably practicable on or after [F15IP completion day] enter a re-registered design in the register of designs.
- (2) The obligation under section 22(1) (inspection of registered designs) applies to a re-registered design on and after the day on which the re-registered design is entered in the register (notwithstanding that no certificate of registration has been granted).

Textual Amendments

F15 Words in Sch. 1A substituted in earlier amending provision S.I. 2019/638, Sch. 3 para. 3 (31.12.2020) by The Intellectual Property (Amendment etc.) (EU Exit) Regulations 2020 (S.I. 2020/1050), regs. 1(2), 21(c)(i)

Opt out

- 3 (1) Subject to sub-paragraph (2), the proprietor of an existing registered Community design may at any time on or after [F15IP completion day] serve a notice on the registrar that the design is not to be treated as if it had been registered under this Act.
- (2) A notice under sub-paragraph (1) may not be served where on or after [F15IP completion day]—
- (a) the re-registered design which derives from the existing registered Community design (or any interest in it)—
- (i) has been assigned or otherwise transferred except by an assent by personal representatives, or
- (ii) has had an interest created in it by a mortgage, licence or other instrument; or
- (b) proceedings based on the re-registered design have been initiated by the proprietor or with the proprietor's consent.
- (3) A notice served under sub-paragraph (1) must—
- (a) identify the existing registered Community design; and
- (b) include the name and address of any person having an interest in the existing registered Community design which had effect before [F15IP completion day] in the United Kingdom and in respect of which an entry was recorded in the RCD register.
- (4) A notice under sub-paragraph (1) is of no effect unless the proprietor in that notice certifies that any such person—

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- (a) has been given not less than three months' notice of the proprietor's intention to serve such a notice; or
 - (b) is not affected by, or if affected consents to, the notice.
- (5) Where a notice has been served under sub-paragraph (1)—
- (a) the design ceases with effect from [F15IP completion day] to be treated as if it had been registered under this Act,
 - (b) the obligation imposed on the registrar under paragraph 2 (entries to be made in the register in relation to designs treated as registered under this Act) ceases to have effect, and
 - (c) the registrar must make any necessary amendments to the register.

Textual Amendments

F15 Words in [Sch. 1A](#) substituted in earlier amending provision S.I. 2019/638, Sch. 3 para. 3 (31.12.2020) by [The Intellectual Property \(Amendment etc.\) \(EU Exit\) Regulations 2020 \(S.I. 2020/1050\)](#), regs. 1(2), [21\(c\)\(i\)](#)

Effect of claim of priority

- 4
- (1) This paragraph applies where a right of priority has been claimed in accordance with Article 42 in respect of an existing registered Community design.
 - (2) The proprietor of the re-registered design which derives from the existing registered Community design is to be treated on and after [F15IP completion day] as having the same claim of priority.
 - (3) Accordingly, the relevant date for the purposes of establishing whether (or to what extent) the re-registered design is new or has individual character is the date of filing of the application for registration of a design in a convention country which formed the basis for the claim of priority.

Textual Amendments

F15 Words in [Sch. 1A](#) substituted in earlier amending provision S.I. 2019/638, Sch. 3 para. 3 (31.12.2020) by [The Intellectual Property \(Amendment etc.\) \(EU Exit\) Regulations 2020 \(S.I. 2020/1050\)](#), regs. 1(2), [21\(c\)\(i\)](#)

Unregistered pre-exit transfers

- 5
- (1) This paragraph applies where immediately before [F15IP completion day] there is a transfer of an existing registered Community design that has not been entered in the RCD register (a “relevant transfer”).
 - (2) Section 19 (registration of assignments, etc.) applies in relation to a relevant transfer as if it were an assignment of the re-registered design which derives from the existing registered Community design which has been transferred.

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Textual Amendments

F15 Words in [Sch. 1A](#) substituted in earlier amending provision S.I. 2019/638, Sch. 3 para. 3 (31.12.2020) by [The Intellectual Property \(Amendment etc.\) \(EU Exit\) Regulations 2020 \(S.I. 2020/1050\)](#), regs. 1(2), [21\(c\)\(i\)](#)

Pre-exit licences to continue to have effect in the United Kingdom

- 6 (1) This paragraph applies where immediately before [F15IP completion day] an existing registered Community design is the subject of a licence which—
- authorises the doing of acts in the United Kingdom which would otherwise infringe an existing registered Community design, and
 - does not expire on [F15IP completion day] (a “relevant licence”).
- (2) Subject to any agreement to the contrary between the licensee and the licensor, a relevant licence continues to authorise the doing of acts which would otherwise infringe the right in the re-registered design which derives from the existing registered Community design.
- (3) Sub-paragraph (2) is subject to the terms on which the relevant licence was granted, subject to such modifications as are necessary for their application in the United Kingdom.
- (4) Section 19 (registration of assignments, etc.) applies in relation to a relevant licence as if it were a licence of the re-registered design deriving from the existing registered Community design which is subject to the relevant licence, subject to the following modification.
- (5) Where immediately before [F15IP completion day] there is an entry in the RCD register relating to the relevant licence, section 19(5) does not apply to the licence until after the expiry of the period of 12 months beginning with the day after that on which [F15IP completion day] falls.

Textual Amendments

F15 Words in [Sch. 1A](#) substituted in earlier amending provision S.I. 2019/638, Sch. 3 para. 3 (31.12.2020) by [The Intellectual Property \(Amendment etc.\) \(EU Exit\) Regulations 2020 \(S.I. 2020/1050\)](#), regs. 1(2), [21\(c\)\(i\)](#)

Security interests in existing registered Community designs

- 7 (1) This paragraph applies where immediately before [F15IP completion day] an existing registered Community design is the subject of an interest which has been granted as security and does not expire on [F15IP completion day] (a “relevant security interest”).
- (2) References to the existing registered Community design in any document which grants or refers to the relevant security interest are to be read as including references to the re-registered design which derives from the existing registered Community design.
- (3) Section 19 (registration of assignments, etc.) applies in relation to a relevant security interest as if it were a security interest granted in respect of the re-registered design

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deriving from the existing registered Community design which is subject to the relevant security interest, subject to the following modification.

- (4) Where immediately before [F15IP completion day] there is an entry in the RCD register relating to the relevant security interest, section 19(5) does not apply to the document granting the interest until after the expiry of the period of 12 months beginning with the day after that on which [F15IP completion day] falls.

Textual Amendments

F15 Words in [Sch. 1A](#) substituted in earlier amending provision S.I. 2019/638, Sch. 3 para. 3 (31.12.2020) by [The Intellectual Property \(Amendment etc.\) \(EU Exit\) Regulations 2020 \(S.I. 2020/1050\)](#), regs. 1(2), [21\(c\)\(i\)](#)

Continuity of rights in relation to an existing registered Community design

- 8 (1) References to an existing registered Community design or the registration of an existing registered Community design in any document entered into before [F15IP completion day] shall, unless there is evidence that the document was not intended to have effect in the United Kingdom, be read on and after [F15IP completion day] as including references to the re-registered design or the registration of the re-registered design which derives from the existing registered Community design.
- (2) Subject to any agreement to the contrary, a consent granted before [F15IP completion day] by the proprietor of an existing registered Community design to the doing on or after [F15IP completion day] of an act in the United Kingdom which would otherwise infringe the right in the re-registered design which derives from the existing registered Community design is to be treated for the purposes of section 7A as a consent to the doing of that act granted by the registered proprietor of the re-registered design.

Textual Amendments

F15 Words in [Sch. 1A](#) substituted in earlier amending provision S.I. 2019/638, Sch. 3 para. 3 (31.12.2020) by [The Intellectual Property \(Amendment etc.\) \(EU Exit\) Regulations 2020 \(S.I. 2020/1050\)](#), regs. 1(2), [21\(c\)\(i\)](#)

Pending proceedings concerning an existing registered Community design

- 9 (1) This paragraph applies where on [F15IP completion day] an existing registered Community design is the subject of proceedings which are pending (“pending proceedings”) before a court in the United Kingdom designated for the purposes of Article 80 (“a Community design court”).
- (2) Subject to sub-paragraphs (3) and (4), the provisions contained or referred to in Title IX of the Community Design Regulation (with the exception of Articles 86(2), (4), (5) and 91) shall continue to apply to the pending proceedings as if the United Kingdom were still a Member State with effect from [F15IP completion day].
- (3) Where the pending proceedings involve a claim for infringement or for threatened infringement of an existing registered Community design, without prejudice to any

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other relief by way of damages, accounts or otherwise available to the proprietor of the existing registered Community design, the Community design court may grant an injunction to prohibit unauthorised use of the re-registered design which derives from the existing registered Community design.

- (4) Where the pending proceedings involve a counterclaim for a declaration of invalidity in relation to an existing registered Community design, the Community design court may declare the registration of the re-registered design which derives from the existing registered Community design to be invalid (wholly or in part).
- (5) Where the registration of a re-registered design is declared invalid to any extent, the registration shall to that extent be treated as having been invalid from the date of registration or from such other date as the court may direct.
- (6) For the purposes of this paragraph proceedings are treated as pending on ^{F15}IP completion day] if they were instituted but not finally determined before ^{F15}IP completion day].

Textual Amendments

F15 Words in *Sch. 1A* substituted in earlier amending provision S.I. 2019/638, Sch. 3 para. 3 (31.12.2020) by [The Intellectual Property \(Amendment etc.\) \(EU Exit\) Regulations 2020 \(S.I. 2020/1050\)](#), regs. 1(2), 21(c)(i)

Existing registered Community design: effect of invalidity

[^{F16}9A. (1) This paragraph applies where, on IP completion day, an existing registered Community design is the subject of proceedings under Article 25 (Grounds for invalidity) which have been instituted but not finally determined before IP completion day (“invalidation proceedings”).

- (2) Subject to sub-paragraph (4) where—
 - (a) the existing registered Community design is declared invalid (whether wholly or partly) pursuant to a decision which is finally determined, and
 - (b) the registrar has either—
 - (i) received notice of the situation referred to in paragraph (a) (“an invalidation notice”), or
 - (ii) otherwise become aware of the situation referred to in paragraph (a),the registration of the re-registered design which derives from the existing registered Community design must be declared invalid to the same extent as the existing registered Community design.
- (3) Where (by virtue of sub-paragraph (2)) the registration of a re-registered design is declared invalid, the registrar must—
 - (a) where there is a partial declaration of invalidity, amend the entry in the register of designs;
 - (b) otherwise, remove the re-registered design from the register.
- (4) The registration of a re-registered design must not be declared invalid under sub-paragraph (2) where the grounds on which the existing registered Community design was declared invalid (whether wholly or partly) would not apply or would not have been satisfied in relation to the re-registered Community design if—

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- (a) the re-registered design had been the subject of an entry on the register as at the date the invalidation proceedings were instituted, and
 - (b) an application for a declaration of invalidity of the re-registered design based on those grounds had been made on that date under section 11ZA.
- (5) Where the registration of a re-registered design is declared invalid to any extent pursuant to this paragraph—
- (a) it shall to that extent be treated as having been invalid from the date on which the rights of the proprietor of the existing registered Community design from which it derives are deemed to have ceased under the Community Design Regulation;
 - (b) subject to any claim for compensation for damage caused by negligence or lack of good faith on the part of the proprietor or a claim for restitution based upon the unjust enrichment of the proprietor, the invalidity of the registration of the re-registered design does not affect—
 - (i) a decision arising from infringement proceedings which has been finally determined and which has been enforced prior to the date of the declaration of invalidity made pursuant to sub-paragraph (2) (“the invalidity declaration date”);
 - (ii) any contract entered into prior to the invalidity declaration date to the extent that it has been performed prior to that date, subject to the right of a party to the contract to claim the repayment of any consideration paid under the contract where, having regard to the circumstances, it is fair and equitable for such repayment to be made.
- (6) Where a declaration is made under sub-paragraph (2), section 11ZE(2) does not apply.
- (7) An invalidation notice may be sent by any person.
- (8) For the purposes of this paragraph—
- (a) proceedings are instituted if an application or counterclaim for a declaration of invalidity—
 - (i) has been filed (and not subsequently withdrawn) with the European Union Intellectual Property Office or a court designated for the purposes of Article 80, and
 - (ii) meets the requirements for being accorded a filing date under the Community Design Regulation and Commission Regulation (EC) No 2245/2002 of 21 October 2002;
 - (b) a decision is finally determined when—
 - (i) it has been determined; and
 - (ii) there is no further possibility of the determination being varied or set aside (disregarding any power to grant permission to appeal out of time).
- (9) An appeal lies from a declaration of invalidity under sub-paragraph (2).]

Textual Amendments

F16 Sch. 1A para. 9A inserted in earlier amending provision S.I. 2019/638, Sch. 3 para. 3 (31.12.2020) by The Intellectual Property (Amendment etc.) (EU Exit) Regulations 2020 (S.I. 2020/1050), regs. 1(2), 21(e)(ii)

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Effect of injunction protecting an existing registered Community design

- 10 (1) This paragraph applies where immediately before [F¹⁵IP completion day] an injunction is in force prohibiting the performance of acts in the United Kingdom which infringe or would infringe an existing registered Community design (a “relevant injunction”).
- (2) Subject to any order of the court to the contrary, a relevant injunction will have effect and be enforceable to prohibit the performance of acts which infringe or would infringe the right in a re-registered design to the same extent as in relation to the existing registered Community design from which the re-registered design derives as if it were an injunction granted by the court.

Textual Amendments

- F15** Words in *Sch. 1A* substituted in earlier amending provision S.I. 2019/638, Sch. 3 para. 3 (31.12.2020) by *The Intellectual Property (Amendment etc.) (EU Exit) Regulations 2020* (S.I. 2020/1050), regs. 1(2), 21(c)(i)

PART 2

APPLICATIONS FOR REGISTERED COMMUNITY DESIGNS WHICH ARE PENDING AT [F¹⁵IP COMPLETION DAY]

Applications for registration pending immediately before [F¹⁵IP completion day]

- 11 (1) In this Part references to an existing EU application are to an application for registration of a design under the Community Design Regulation in respect of which the conditions in sub-paragraph (2) are satisfied.
- (2) The conditions referred to in sub-paragraph (1) are that immediately before [F¹⁵IP completion day]—
- (a) the application has been accorded a filing date pursuant to Article 38; and
 - (b) the application has been neither granted nor refused by the European Union Intellectual Property Office.
- 12 (1) Where a person who has filed an existing EU application or a successor in title of that person applies for registration of the same design under this Act within a period beginning with [F¹⁵IP completion day] and ending with the end of the relevant period, the relevant date for the purposes of establishing whether (or to what extent) the design which is the subject of the application under this Act is new or has individual character is the earliest of—
- (a) the filing date accorded pursuant to Article 38 to the existing EU application;
 - (b) the date of priority (if any) claimed under Article 42 in respect of the existing EU application.
- (2) In sub-paragraph (1), the “relevant period” means the period of nine months beginning with the day after that on which [F¹⁵IP completion day] falls.
- (3) For the purposes of this Act—
- (a) where an application is made of the type referred to in sub-paragraph (1) within the period referred to in that sub-paragraph, the date of the application

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is the filing date accorded pursuant to Article 38 to the existing EU application, and

- (b) where the registrar registers a design which is the subject of an application of the type referred to in sub-paragraph (1) which is made within the period referred to in that sub-paragraph, the date of registration of the design is the filing date accorded pursuant to Article 38 to the existing EU application.

- (4) Accordingly section 3C does not apply in relation to the design.

PART 3

REGISTERED COMMUNITY DESIGNS WHERE PUBLICATION IS DEFERRED AT [F¹⁵IP COMPLETION DAY]

Designs registered at the EUIPO immediately before [F¹⁵IP completion day] where publication is deferred

- 13 (1) In this Part references to a deferred design are to a design registered under the Community Design Regulation in respect of which the conditions in sub-paragraph (2) are satisfied.
- (2) The conditions referred to in sub-paragraph (1) are that immediately before [F¹⁵IP completion day]—
 - (a) the design is entered in the RCD register, and
 - (b) publication of the design is deferred under Article 50.
- 14 (1) This paragraph applies where the proprietor of a deferred design or a successor in title of that person applies for registration of the same design under this Act within a period beginning with [F¹⁵IP completion day] and ending with the end of the relevant period.
- (2) Sections 3A(4) and 3B do not apply in relation to the application.
- (3) The relevant date for the purposes of establishing whether (or to what extent) the design which is the same as the deferred design is new or has individual character is the earliest of—
 - (a) the filing date accorded pursuant to Article 38 to the application for the deferred design;
 - (b) the date of priority (if any) claimed under Article 42 in respect of the application for the deferred design.
- (4) If the registrar registers a design which is the subject of an application of the type referred to in sub-paragraph (1) which is made within the period referred to in that sub-paragraph, the date of registration of the design is the date on which the deferred design which is the same as that design was treated as registered under the Community Design Regulation.
- (5) Accordingly section 3C does not apply in relation to the design.
- (6) In sub-paragraph (1), the “relevant period” means, the period of nine months beginning with the day after that on which [F¹⁵IP completion day] falls.

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PART 4

TREATMENT OF REGISTERED COMMUNITY DESIGNS WHOSE REGISTRATIONS EXPIRE DURING THE PERIOD OF SIX MONTHS ENDING ON [F15IP COMPLETION DAY]

Application of Part

- 15 (1) This Part applies to a design in respect of which the conditions in sub-paragraph (2) are satisfied (an “expired Community design”).
- (2) The conditions referred to in sub-paragraph (1) are that—
- (a) immediately before the transitional period, the design was the subject of a registration under the Community Design Regulation,
 - (b) the registration of the design expired during the transitional period (such that the design did not fall within paragraph 1(1)), and
 - (c) the registration of the design would have been capable of being renewed under Article 13 for at least one further period of five years had a request for renewal been made under Article 13 prior to that expiry.
- (3) An expired Community design is to be treated as if it were an existing registered Community design.
- (4) The provisions of Part 1 of this Schedule apply to an expired Community design as they apply to an existing Community design subject to the provisions of this Part of the Schedule.
- (5) Notwithstanding the entry in the register of designs (under paragraph 2, as applied by sub-paragraph (4)) of a re-registered design which derives from an expired Community design, the right in the re-registered design is expired until the period for which it subsists is extended in accordance with paragraph 16 (or the re-registered design is removed from the register in accordance with paragraph 16(3)).
- (6) In this paragraph, “transitional period” means the period of six months ending with [F15IP completion day].

Renewal of registration of an expired Community design

- 16 (1) Where the registration of an expired Community design is renewed in accordance with Article 13(3) of the Continuing Community Design Regulation the registrar must, as soon as reasonably practicable after the date of such renewal, record in the register of designs the extension of the period for which subsists the right in the re-registered design which derives from the expired Community design.
- (2) Where the period for which the right in a re-registered design subsists is extended under sub-paragraph (1), the right is to be treated as if it had never expired, with the result that—
- (a) anything done under or in relation to the right in the period beginning with [F15IP completion day] and ending with the extension under sub-paragraph (1) is to be treated as valid,
 - (b) an act which would have constituted an infringement of the right if it had not expired is to 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 is to be treated as such use.

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- (3) If the registration of an expired Community design is not renewed within the time period permitted by Article 13(3) of the Continuing Community Design Regulation—
- (a) the registrar must remove from the register of designs the re-registered design which derives from the expired Community design; and
 - (b) the re-registered design ceases with effect from [F15IP completion day] to be treated as if it had been registered under this Act.
- (4) In this Schedule “the Continuing Community Design Regulation” means the Council Regulation (EC) No 6/2002 of 12th December 2001 on Community Designs as it has effect in EU law.

PART 5

RESTORATION OF REGISTERED COMMUNITY DESIGN REGISTRATIONS AND APPLICATIONS

Restoration of registered Community design to the RCD register

- 17 (1) This paragraph applies where:
- (a) before [F15IP completion day] a registered Community design is removed from the RCD register pursuant to the Community Design Regulation, and
 - (b) on or after [F15IP completion day] the registration of the said design is restored pursuant to Article 67 of the Continuing Community Design Regulation.
- (2) Where the proprietor of the design files a request with the registrar within the period of six months beginning with the date of such restoration—
- (a) the design will be treated as if it were an existing registered Community design on [F15IP completion day];
 - (b) the provisions of Part 1 apply to the re-registered design which derives from the existing registered Community design.

Textual Amendments

F15 Words in [Sch. 1A](#) substituted in earlier amending provision S.I. 2019/638, Sch. 3 para. 3 (31.12.2020) by [The Intellectual Property \(Amendment etc.\) \(EU Exit\) Regulations 2020 \(S.I. 2020/1050\)](#), regs. 1(2), [21\(c\)\(i\)](#)

Restoration of application for registered Community design

- 18 (1) This paragraph applies where—
- (a) before [F15IP completion day] an application for a registered Community design is refused pursuant to the Community Design Regulation; and
 - (b) on or after [F15IP completion day] the application is restored pursuant to Article 67 of the Continuing Community Design Regulation (a “relevant application”).
- (2) Where a person who has filed a relevant application or a successor in title of that person applies for registration of the same design under this Act within a period

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beginning with [^{F15}IP completion day] and ending with the end of the relevant period, the relevant date for the purposes of establishing whether the design which is the subject of the application under this Act is new or has individual character is the earliest of—

- (a) the filing date accorded pursuant to Article 38 to the relevant application;
- (b) the date of priority (if any) claimed under Article 42 in respect of the relevant application.

- (3) In sub-paragraph (2), the “relevant period” means the period of nine months beginning with the day on which the application is restored as referred to in sub-paragraph (1)(b).

Textual Amendments

- F15** Words in [Sch. 1A](#) substituted in earlier amending provision S.I. 2019/638, Sch. 3 para. 3 (31.12.2020) by [The Intellectual Property \(Amendment etc.\) \(EU Exit\) Regulations 2020 \(S.I. 2020/1050\)](#), regs. 1(2), [21\(c\)\(i\)](#)

PART 6

INTERPRETATION

Interpretation

- 19 In this Schedule—
- “the Community Design Regulation” has the meaning given by paragraph 1(7);
 - “the Continuing Community Design Regulation” has the meaning given by paragraph 16(4);
 - “existing registered Community design” has the meaning given by paragraph 1(1);
 - “expired Community design” has the meaning given by paragraph 15(1);
 - “RCD register” has the meaning given by paragraph 1(7);
 - “re-registered design” has the meaning given by paragraph 1(2).
- 20 References in this Schedule to an “Article” are to an Article of the Community Design Regulation.

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SCHEDULE 1B

Section 12B

INTERNATIONAL DESIGNS

PART 1

EXISTING INTERNATIONAL DESIGNS

International designs in respect of which the European Union is designated to be treated as registered under the Act

- 1 (1) A design which, immediately before [F¹⁷IP completion day], meets the requirements of sub-paragraph (2) (a “protected international registered design (EU)”) is to be treated on and after [F¹⁷IP completion day] as if an application for its registration had been made, and it had been registered, under this Act.
- (2) The requirements referred to in sub-paragraph (1) are—
 - (a) the design is the subject of an international registration which designates the European Union;
 - (b) the international registration has been published by the International Bureau pursuant to Article 10(3) of the Geneva Act;
 - (c) the European Union Intellectual Property Office has sent to the International Bureau a statement under Rule 18*bis* of the Common Regulations under the 1999 Act and the 1960 Act of the Hague Agreement to the effect that protection is granted in relation to the design, or the period under Article 106e(1) of the Community Design Regulation for communicating to the International Bureau a notification of refusal in respect of the international registration has expired; and
 - (d) the effects of the international registration so far as they relate to the design have neither been—
 - (i) refused by the European Union Intellectual Property Office pursuant to Article 106e(1) of the Community Design Regulation; nor
 - (ii) declared wholly invalid pursuant to Article 106f of the Community Design Regulation.
- (3) Where prior to [F¹⁷IP completion day] the effects of the international registration to which a protected international registered design (EU) is subject are declared partly invalid so far as relating to that design pursuant to Article 106f of the Community Design Regulation, the re-registered international design which derives from the protected international registered design (EU) has effect under this Act to the extent that the effects of the international registration so far as relating to the design have not been declared invalid.
- (4) A registered design which comes into being by virtue of sub-paragraph (1) is referred to in this Schedule as a “re-registered international design”.
- (5) This Act applies to a re-registered international design as it applies to other registered designs except as otherwise provided in this Schedule.
- (6) For the purposes of this Act—
 - (a) the date of registration of a re-registered international design is the date on which the protected international registered design (EU) from which the re-

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- registered international design derives was treated as registered under the Geneva Act, and
- (b) the date of the application of a re-registered international design is the date treated, under Article 9 of the Geneva Act, as the filing date of the application for the registration of the protected international registered design (EU) from which the re-registered international design derives.
- (7) Nothing in this Act authorises the imposition of a fee, or the making of provision by rules or regulations which authorises the imposition of a fee, in respect of any matter relating to a re-registered international design (see instead provision made by regulations under Schedule 4 to the European Union (Withdrawal) Act 2018).
- (8) The following provisions of this Act do not apply to a re-registered international design—
- (a) section 7A(6);
- (b) section 18.
- (9) In this Schedule—
- (a) “the Community Design Regulation” means Council Regulation (EC) No 6/2002 of 12th December 2001 on Community Designs as it had effect immediately before [F17IP completion day];
- (b) “the Geneva Act” means the Geneva Act of the Hague Agreement Concerning the International Registration of Industrial Designs adopted by the Diplomatic Conference on 2 July 1999;
- (c) “the International Bureau” means the International Bureau of the World Intellectual Property Organization; and
- (d) “international registration” means the international registration of an industrial design effected according to the Geneva Act.

Textual Amendments

F17 Words in *Sch. 1B* substituted in earlier amending provision S.I. 2019/638, Sch. 3 para. 3 (31.12.2020) by *The Intellectual Property (Amendment etc.) (EU Exit) Regulations 2020* (S.I. 2020/1050), regs. 1(2), 21(d)(i)

Entries to be made in the register in relation to designs treated as registered under this Act

- 2 (1) The registrar must as soon as reasonably practicable on or after [F17IP completion day] enter a re-registered international design in the register of designs.
- (2) The obligation under section 22(1) (inspection of registered designs) applies to a re-registered international design on and after the day on which the re-registered international design is entered in the register (notwithstanding that no certificate of registration has been granted).

Textual Amendments

F17 Words in *Sch. 1B* substituted in earlier amending provision S.I. 2019/638, Sch. 3 para. 3 (31.12.2020) by *The Intellectual Property (Amendment etc.) (EU Exit) Regulations 2020* (S.I. 2020/1050), regs. 1(2), 21(d)(i)

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Opt out

- 3 (1) Subject to sub-paragraph (2), the holder of the international registration to which a protected international registered design (EU) is subject (“the proprietor”) may at any time on or after [F17IP completion day] serve a notice on the registrar that the design is not to be treated as if it had been registered under this Act.
- (2) A notice under sub-paragraph (1) may not be served where on or after [F17IP completion day]—
- (a) the re-registered international design which derives from the protected international registered design (EU) (or any interest in it)—
 - (i) has been assigned or otherwise transferred except by an assent by personal representatives, or
 - (ii) has had an interest created in it by a mortgage, licence or other instrument; or
 - (b) proceedings based on the re-registered international design have been initiated by the proprietor or with the proprietor's consent.
- (3) A notice served under sub-paragraph (1) must:
- (a) identify the protected international registered design (EU); and
 - (b) include the name and address of any person who, to the best of the proprietor's knowledge, has an interest in the protected international registered design (EU).
- (4) A notice under sub-paragraph (1) is of no effect unless the proprietor in that notice certifies that any such person—
- (a) has been given not less than three months' notice of the proprietor's intention to serve such a notice; or
 - (b) is not affected by, or if affected consents to, the notice.
- (5) Where a notice has been served under sub-paragraph (1)—
- (a) the design ceases with effect from [F17IP completion day] to be treated as if it had been registered under this Act,
 - (b) the obligation imposed on the registrar under paragraph 2 (entries to be made in the register in relation to designs treated as registered under this Act) ceases to have effect, and
 - (c) the registrar must make any necessary amendments to the register.

Textual Amendments

F17 Words in [Sch. 1B](#) substituted in earlier amending provision S.I. 2019/638, Sch. 3 para. 3 (31.12.2020) by [The Intellectual Property \(Amendment etc.\) \(EU Exit\) Regulations 2020 \(S.I. 2020/1050\)](#), regs. 1(2), 21(d)(i)

Effect of claim of priority

- 4 (1) This paragraph applies where a right of priority has been claimed in accordance with Article 6 of the Geneva Act in respect of the international registration to which a protected international registered design (EU) is subject.

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- (2) The proprietor of the re-registered international design which derives from the protected international registered design (EU) is to be treated on and after [F17IP completion day] as having the same claim of priority.
- (3) Accordingly, the relevant date for the purposes of establishing whether (or to what extent) the re-registered international design is new or has individual character is the date of filing of the application for registration of a design in a convention country or a member of the World Trade Organization which formed the basis for the claim of priority.

Textual Amendments

F17 Words in [Sch. 1B](#) substituted in earlier amending provision S.I. 2019/638, Sch. 3 para. 3 (31.12.2020) by [The Intellectual Property \(Amendment etc.\) \(EU Exit\) Regulations 2020 \(S.I. 2020/1050\)](#), regs. 1(2), [21\(d\)\(i\)](#)

Unregistered pre-exit transfers

- 5
- (1) This paragraph applies where immediately before [F17IP completion day]—
 - (a) there is a change in ownership of the international registration to which a protected international registered design (EU) is subject,
 - (b) the change in ownership has effect in respect of the European Union and the protected international registered design (EU), and
 - (c) the change in ownership has not been entered in the international register (a “relevant transfer”).
 - (2) Section 19 (registration of assignments, etc.) applies in relation to a relevant transfer as if it were an assignment of the re-registered international design which derives from the protected international registered design (EU) which has been transferred.

Textual Amendments

F17 Words in [Sch. 1B](#) substituted in earlier amending provision S.I. 2019/638, Sch. 3 para. 3 (31.12.2020) by [The Intellectual Property \(Amendment etc.\) \(EU Exit\) Regulations 2020 \(S.I. 2020/1050\)](#), regs. 1(2), [21\(d\)\(i\)](#)

Pre-exit licences to continue to have effect in the United Kingdom

- 6
- (1) This paragraph applies where immediately before [F17IP completion day] a protected international registered design (EU) is the subject of a licence which—
 - (a) authorises the doing of acts in the United Kingdom which would otherwise infringe the protected international registered design (EU), and
 - (b) does not expire on [F17IP completion day] (a “relevant licence”).
 - (2) Subject to any agreement to the contrary between the licensee and the licensor, a relevant licence continues to authorise the doing of acts which would otherwise infringe the re-registered international design which derives from the protected international registered design (EU).

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- (3) Sub-paragraph (2) is subject to the terms on which the relevant licence was granted, subject to such modifications as are necessary for their application in the United Kingdom.
- (4) Section 19 (registration of assignments, etc.) applies in relation to a relevant licence as if it were a licence of the re-registered international design deriving from the protected international registered design (EU) which is subject to the relevant licence, subject to the following modification.
- (5) Section 19(5) does not apply to the licence until after the expiry of the period of 12 months beginning with the day after that on which [F17IP completion day] falls.

Textual Amendments

- F17** Words in [Sch. 1B](#) substituted in earlier amending provision S.I. 2019/638, Sch. 3 para. 3 (31.12.2020) by [The Intellectual Property \(Amendment etc.\) \(EU Exit\) Regulations 2020 \(S.I. 2020/1050\)](#), regs. 1(2), [21\(d\)\(i\)](#)

Security interests in protected ^{F18}... international registered designs (EU)

- 7 (1) This paragraph applies where immediately before [F17IP completion day] a protected international registered design (EU) is the subject of an interest which has been granted as security and does not expire on [F17IP completion day] (a “relevant security interest”).
- (2) References to the protected international registered design (EU), or the international registration to which the protected international registered design (EU) is subject, in any document which grants or refers to the relevant security interest are to be read as including references to the re-registered international design which derives from the protected international registered design (EU).
- (3) Section 19 (registration of assignments, etc.) applies in relation to a relevant security interest as if it were a security interest granted in respect of the re-registered design deriving from the protected international registered design (EU) which is subject to the relevant security interest, subject to the following modification.
- (4) Section 19(5) does not apply to the interest until after the expiry of 12 months beginning with the day after that on which [F17IP completion day] falls.

Textual Amendments

- F17** Words in [Sch. 1B](#) substituted in earlier amending provision S.I. 2019/638, Sch. 3 para. 3 (31.12.2020) by [The Intellectual Property \(Amendment etc.\) \(EU Exit\) Regulations 2020 \(S.I. 2020/1050\)](#), regs. 1(2), [21\(d\)\(i\)](#)
- F18** Word in [Sch. 1B para. 7](#) heading omitted in earlier amending provision S.I. 2019/638, Sch. 3 para. 3 (31.12.2020) by virtue of [The Intellectual Property \(Amendment etc.\) \(EU Exit\) Regulations 2020 \(S.I. 2020/1050\)](#), regs. 1(2), [21\(d\)\(ii\)](#)

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Continuity of rights in relation to a protected international registered design (EU)

- 8 (1) References to a protected international registered design (EU), or the international registration to which a protected international registered design (EU) is subject, in any document entered into before [F17IP completion day] shall, unless there is evidence that the document was not intended to have effect in the United Kingdom, be read on and after [F17IP completion day] as including references to the re-registered international design or the registration of the re-registered international design which derives from the protected international registered design (EU).
- (2) Subject to any agreement to the contrary, a consent granted before [F17IP completion day] by the holder of the international registration to which a protected international registered design (EU) is subject to the doing on or after [F17IP completion day] of an act in the United Kingdom which would otherwise infringe the re-registered international design which derives from the protected international registered design (EU) is to be treated for the purposes of section 7A as a consent to the doing of that act granted by the registered proprietor of the re-registered international design.

Textual Amendments

- F17** Words in [Sch. 1B](#) substituted in earlier amending provision S.I. 2019/638, Sch. 3 para. 3 (31.12.2020) by [The Intellectual Property \(Amendment etc.\) \(EU Exit\) Regulations 2020 \(S.I. 2020/1050\)](#), regs. 1(2), [21\(d\)\(i\)](#)

Pending proceedings concerning a protected international registered design (EU)

- 9 (1) This paragraph applies where on [F17IP completion day] a protected international registered design (EU) is the subject of proceedings which are pending (“pending proceedings”) before a court in the United Kingdom designated for the purposes of Article 80 (“a Community design court”).
- (2) Subject to sub-paragraphs (3) and (4), the provisions contained or referred to in Title IX of the Community Design Regulation (with the exceptions of Articles 86(2), (4), (5) and 91) shall continue to apply to the pending proceedings as if the United Kingdom were still a Member State with effect from [F17IP completion day].
- (3) Where the pending proceedings involve a claim for infringement or for threatened infringement of a protected international registered design (EU), without prejudice to any other relief by way of damages, accounts or otherwise available to the holder of the international registration to which the protected international registered design (EU) is subject, the Community design court may grant an injunction to prohibit unauthorised use of the re-registered international design which derives from the protected international registered design (EU).
- (4) Where the pending proceedings involve a counterclaim for a declaration of invalidity in relation to a protected international registered design (EU), the Community design court may declare the registration of the re-registered international design which derives from the protected international registered design (EU) to be invalid (wholly or in part).
- (5) Where the registration of a re-registered international design is declared invalid to any extent, the registration shall to that extent be treated as having been invalid from the date of registration or from such other date as the court may direct.

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- (6) For the purposes of this paragraph proceedings are treated as pending on [F17IP completion day] if they were instituted but not finally determined before [F17IP completion day].

Textual Amendments

F17 Words in [Sch. 1B](#) substituted in earlier amending provision S.I. 2019/638, Sch. 3 para. 3 (31.12.2020) by [The Intellectual Property \(Amendment etc.\) \(EU Exit\) Regulations 2020 \(S.I. 2020/1050\)](#), regs. 1(2), [21\(d\)\(i\)](#)

Effect of injunction protecting a protected international registered design (EU)

- 10 (1) This paragraph applies where immediately before [F17IP completion day] an injunction is in force prohibiting the performance of acts in the United Kingdom which infringe or would infringe a protected international registered design (EU) (a “relevant injunction”).
- (2) Subject to any order of the court to the contrary, a relevant injunction will have effect and be enforceable to prohibit the performance of acts which infringe or would infringe the right in a re-registered international design to the same extent as in relation to the protected international registered design (EU) from which the re-registered international design derives as if it were an injunction granted by the court.

Textual Amendments

F17 Words in [Sch. 1B](#) substituted in earlier amending provision S.I. 2019/638, Sch. 3 para. 3 (31.12.2020) by [The Intellectual Property \(Amendment etc.\) \(EU Exit\) Regulations 2020 \(S.I. 2020/1050\)](#), regs. 1(2), [21\(d\)\(i\)](#)

PART 2

INTERNATIONAL REGISTRATIONS IN RESPECT OF WHICH THE PERIOD FOR REFUSAL HAS NOT EXPIRED BEFORE [F17IP COMPLETION DAY] ETC

- 11 (1) In this Part references to a “pending international design (EU)” are to a design which, immediately before [F17IP completion day], meets the requirements of sub-paragraph (2).
- (2) The requirements referred to in sub-paragraph (1) are—
- (a) the design is the subject of an international registration which designates the European Union;
 - (b) the design is not the subject of—
 - (i) a refusal by the European Union Intellectual Property Office pursuant to Article 106e(1) of the Community Design Regulation; or
 - (ii) a statement by the European Union Intellectual Property Office under Rule 18*bis* of the Common Regulations under the 1999 Act and the 1960 Act of the Hague Agreement to the effect that protection is granted in relation to it;
 - (c) the international registration to which the design is subject—

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- (i) has not been published by the International Bureau pursuant to Article 10(3) of the Geneva Act; or
 - (ii) has been published by the International Bureau but the period under Article 106e(1) of the Community Design Regulation for communicating to the International Bureau a notification of refusal in respect of the international registration has not expired.
- 12 (1) Where the holder of the international registration to which a pending international design (EU) is subject, or a successor in title of that person, makes an application for registration of the same design under this Act within a period beginning with [F17IP completion day] and ending with the end of the relevant period, the relevant date for the purposes of establishing whether (or to what extent) the design which is the subject of the application under this Act is new or has individual character is the earliest of—
 - (a) the date on which the international registration was treated as registered pursuant to Article 10(2) of the Geneva Act;
 - (b) the date of priority (if any) claimed under Article 41 of the Community Design Regulation as applied by Article 106a of that Regulation in respect of the pending international design (EU).
- (2) In sub-paragraph (1), the “relevant period” means the period of nine months beginning with the day after that on which [F17IP completion day] falls.
- (3) For the purposes of this Act—
 - (a) where an application is made of the type referred to in sub-paragraph (1) within the period referred to in that sub-paragraph, the date of the application is the date on which the international registration to which the pending international design (EU) is subject was treated as registered pursuant to Article 10(2) of the Geneva Act, and
 - (b) where the registrar registers a design which is the subject of an application of the type referred to in sub-paragraph (1) which is made within the period referred to in that sub-paragraph, the date of registration of the design is the date on which the international registration to which the pending international design (EU) is subject was treated as registered pursuant to Article 10(2) of the Geneva Act.
- (4) Accordingly section 3C does not apply in relation to the design.

PART 3

TREATMENT OF INTERNATIONAL REGISTERED DESIGNS WHOSE REGISTRATIONS EXPIRE DURING THE PERIOD OF SIX MONTHS ENDING ON [F17IP COMPLETION DAY]

Application of Part

- 13 (1) This Part applies to a design which met the requirements set out in paragraph 1(2) (b) to (d) in respect of which the conditions in sub-paragraph (2) are satisfied (an “expired international design”).
- (2) The conditions referred to in sub-paragraph (1) are that—
 - (a) immediately before the transitional period, the design was the subject of an international registration which designated the European Union,

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- (b) the international registration expired during the transitional period (such that the design did not fall within paragraph 1(1)), and
 - (c) the renewal of the international registration would have been capable of being effected for the European Union in accordance with Article 17 of the Geneva Act for at least one further period of five years had a request for renewal been made in accordance with Article 17(2) prior to that expiry.
- (3) An expired international design is to be treated as if it were a protected international registered design (EU).
- (4) The provisions of Part 1 of this Schedule apply to an expired international design as they apply to a protected international registered design (EU) subject to the provisions of this Part of the Schedule.
- (5) Notwithstanding the entry in the register of designs (under paragraph 2, as applied by sub-paragraph (4)) of a re-registered international design which derives from an expired international design, the right in the re-registered international design is expired until it is extended in accordance with paragraph 14 (or the re-registered design is removed from the register in accordance with paragraph 14(3)).
- (6) In this paragraph, “transitional period” means the period of six months ending with [F17IP completion day].

Renewal of registration of an expired international design

- 14 (1) Where within the period beginning with [F17IP completion day] and ending with the end of the relevant period—
- (a) the international registration to which an expired international design was subject is renewed in accordance with Article 17(2) of the Geneva Act,
 - (b) the renewal has effect in respect of the European Union and the expired international design, and
 - (c) the holder of that international registration notifies the registrar of such renewal, the registrar must, as soon as reasonably practicable after the date of notification, record in the register of designs the extension of the period for which subsists the right in the re-registered international design which derives from the expired international design.
- (2) Where the period for which the right in a re-registered international design subsists is extended under sub-paragraph (1), the right is to be treated as if it had never expired, with the result that—
- (a) anything done under or in relation to the right in the period beginning with [F17IP completion day] and ending with the extension under sub-paragraph (1) is to be treated as valid,
 - (b) an act which would have constituted an infringement of the right if it had not expired is to 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 is to be treated as such use.
- (3) If within the period referred to in sub-paragraph (1) the holder fails to notify the registrar in accordance with sub-paragraph (1)(c)—
- (a) the registrar must remove from the register of designs the re-registered international design which derives from the expired international design, and

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- (b) the re-registered international design ceases with effect from [^{F17}IP completion day] to be treated as if it had been registered under this Act.
- (4) In sub-paragraph (1), the “relevant period” means the period of nine months beginning with the day after that on which [^{F17}IP completion day] falls.

PART 4

INTERPRETATION

Interpretation

- 15 (1) In this Schedule—
- “the Community Design Regulation” has the meaning given by paragraph 1(9);
 - “expired international design” has the meaning given by paragraph 13(1);
 - “the Geneva Act” has the meaning given by paragraph 1(9);
 - “the International Bureau” has the meaning given by paragraph 1(9);
 - “international registration” has the meaning given by paragraph 1(9);
 - “protected international registered design (EU)” has the meaning given by paragraph 1(1);
 - “re-registered international design” has the meaning given by paragraph 1(4).
- (2) For the purposes of paragraphs 1(2)(b) and 11(2)(c), where the international registration to which a design is subject has not been published in its entirety but the design itself has been by virtue of a request made under Article 11(4)(a) of the Geneva Act, the international registration is to be treated as having been published.]

^{F19}SECOND SCHEDULE^{F19}

Textual Amendments

F19 Sch. 2 repealed by [Copyright, Designs and Patents Act 1988 \(c. 48, SIF 67A\)](#) ss. 272, 303(2), Sch. 3 para. 38, Sch. 8

Changes to legislation:

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Changes and effects yet to be applied to :

- s. 11AB heading words inserted by S.I. 2019/93, Sch. 1 para. A1(5) (as inserted) by [S.I. 2019/1245 reg. 16](#) (This amendment not applied to legislation.gov.uk. The affecting statutory instrument has no legal effect. It was made under a procedure which meant that it ceased to have effect 28 days after signing unless it was debated and approved in Parliament within that time. It was not debated and approved within 28 days, so it has expired with no effect.)
- s. 11AB(1) word inserted by S.I. 2019/93, Sch. 1 para. A1(2)(a) (as inserted) by [S.I. 2019/1245 reg. 16](#) (This amendment not applied to legislation.gov.uk. The affecting statutory instrument has no legal effect. It was made under a procedure which meant that it ceased to have effect 28 days after signing unless it was debated and approved in Parliament within that time. It was not debated and approved within 28 days, so it has expired with no effect.)
- s. 11AB(1) words inserted by S.I. 2019/93, Sch. 1 para. A1(2)(b) (as inserted) by [S.I. 2019/1245 reg. 16](#) (This amendment not applied to legislation.gov.uk. The affecting statutory instrument has no legal effect. It was made under a procedure which meant that it ceased to have effect 28 days after signing unless it was debated and approved in Parliament within that time. It was not debated and approved within 28 days, so it has expired with no effect.)
- s. 11AB(6)(a) words inserted by S.I. 2019/93, Sch. 1 para. A1(3) (as inserted) by [S.I. 2019/1245 reg. 16](#) (This amendment not applied to legislation.gov.uk. The affecting statutory instrument has no legal effect. It was made under a procedure which meant that it ceased to have effect 28 days after signing unless it was debated and approved in Parliament within that time. It was not debated and approved within 28 days, so it has expired with no effect.)
- s. 11AB(8) word inserted by S.I. 2019/93, Sch. 1 para. A1(4) (as inserted) by [S.I. 2019/1245 reg. 16](#) (This amendment not applied to legislation.gov.uk. The affecting statutory instrument has no legal effect. It was made under a procedure which meant that it ceased to have effect 28 days after signing unless it was debated and approved in Parliament within that time. It was not debated and approved within 28 days, so it has expired with no effect.)
- s. 22(1) words substituted by [2014 c. 18 s. 9\(3\)](#)
- s. 24G(5) omitted by [S.I. 2019/638 Sch. 8 para. 7](#) (This amendment not applied to legislation.gov.uk. Sch. 8 para. 7 omitted immediately before IP completion day by virtue S.I. 2020/1050, regs. 1(2), 25)
- s. 27(1)(a) words inserted by [2014 c. 18 s. 10\(3\)](#)
- s. 27A amendment to earlier affecting provision 2007 c. 15 s. 143(2) by [2013 c. 22 Sch. 9 para. 49](#) (This amendment not applied to legislation.gov.uk. S. 143, which prospectively inserts s. 27A, was repealed without ever being in force (6.4.2015) by 2014 c. 18, s. 10(11); S.I. 2015/165, art. 3)
- s. 27A inserted by [2007 c. 15 s. 143\(2\)](#) (This amendment not applied to legislation.gov.uk. S. 143 repealed without ever being in force (6.4.2015) by 2014 c. 18, s. 10(11); S.I. 2015/165, art. 3)
- s. 27A(4)-(6) omitted by [2013 c. 22 Sch. 9 para. 21\(3\)](#) (This amendment not applied to legislation.gov.uk. S. 143, which prospectively inserts s. 27A, was repealed without ever being in force (6.4.2015) by 2014 c. 18, s. 10(11); S.I. 2015/165, art. 3)
- s. 28 repealed by [2007 c. 15 s. 143\(1\) Sch. 23 Pt. 6](#) (This amendment not applied to legislation.gov.uk. S. 143 repealed without ever being in force (6.4.2015) by 2014 c. 18, s. 10(11); S.I. 2015/165, art. 3)
- s. 37(2) words inserted by [2014 c. 18 s. 9\(6\)](#)

- s. 37(3) words repealed by [2007 c. 15 Sch. 23 Pt. 6](#) (This amendment not applied to legislation.gov.uk. Words already repealed (6.4.2015) by 2014 c. 18, s. 10(5); S.I. 2015/165, art. 3)
- s. 44(1) words repealed by [2007 c. 15 Sch. 23 Pt. 6](#) (This amendment not applied to legislation.gov.uk. Words already repealed (6.4.2015) by 2014 c. 18, s. 10(4); S.I. 2015/165, art. 3)

Changes and effects yet to be applied to the whole Act associated Parts and Chapters:
Whole provisions yet to be inserted into this Act (including any effects on those provisions):

- s. 22(1)(aa) and word inserted by [2014 c. 18 s. 9\(2\)](#)
- s. 22(5) inserted by [2014 c. 18 s. 9\(4\)](#)
- s. 22(6)(7) inserted by [2014 c. 18 s. 9\(5\)](#)